145-141

RECORD, CASE No. 13,465.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 312.

OTTO NEUBERT, APPELLANT,

vs.

WILLIAM H. GAINES AND MARIA GAINES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED JANUARY 2, 1889.

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INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	1	1
Appearance for defendants	6	4
Order filing answer, cross-bill, and demurrer	7	4
Answer	7	5
Order granting leave to amend complaint	12	8
Order filing replication	13	8
Replication	13	8
Order granting leave to file amended answer	13	8
Amended answer	14	9
Cross-bill	26	17
Deed, Annie and Maggie Bartells to Otto Neubert, Sept. 27, 1881	27	17
Order as to submission, filing briefs, &c.	29	19
Order filing stipulation as to depositions, &c.	30	19
Stipulation as to depositions, &c.	30	19
Order of dismissal as to Annnie and Maggie Bartells	31	20

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 7, 1891.

	Original.	Print.
Interlocutory decree	32	20
Order filing master's report	33	21
Master's report	34	22
Evidence before the master	35	23
Testimony of A. B. Gaines	35	23
John D. Ware	36	23
O. F. Smith	37	24
N. M. Sloan	38	24
George W. Bray	38	25
Otto Neubert	39	25
Order filing exceptions to master's report	40	26
Memorandum as to loss of exceptions	40	26
Evidence on final hearing	40	26
Map of W. H. Gaines' claim, marked "A"	41	26
Map showing old improvements	42	26
Map of W. H. Gaines' claim, marked "B"	43	26
Certified copy of petition No. 784, before the Hot Springs Commission, &c.	44	27
Petition of W. H. and Maria Gaines	45	27
Letter, Commissioner to register and receiver, Nov. 25, 1851	73	39
Letter, Secretary to Commissioner, November 21, 1851	75	40
Application of Maria Gaines *et al.*	76	40
Register's certificates	77	40
Receiver's receipt, December 19, 1851	78	41
Copy of tract book	79	41
Writ of possession	81	42
Statement of evidence offered	83	44
Testimony of William H. Gaines	88	46
Robert B. Runyon	111	56
Jacob W. Parker	123	62
Alfred Whittington	132	67
Jacob W. Parker (recalled)	140	71
Abraham Peters	140	71
Henry Robinson	143	73
Albert Belding	146	74
John H. Lacroy	147	75
William Curl	151	76
George Belding	154	78
Charles Brown	174	87
Joe Crichter	179	89
Elijah Harris	181	90
Nathan H. Cloyes	184	92
Samuel H. Stitt	190	95
Hiram Irwin	193	97
William H. Gaines	194	97
Alphonso Curl	205	102
Hiram Irwin (recalled)	206	103
George M. French	208	104
Power of attorney from William H. Gaines to Albert B. Gaines, December 11, 1879	211	105
Article descriptive of improvements of Abigail Dupass, March 25, 1852	213	106
List of real property assessed for taxation	214	107

	Original.	Print.
Quitclaim of George Belding *et ux.*, October 20, 1877	215	107
Judgment of supreme court of Arkansas in Burke *vs.* Gaines *et al.*	217	108
Certified copy of petition No. 301, before the Hot Springs Commission	219	109
Petition of Frank G. Bartells	219	109
Deed, receiver to Bartels, October 2, 1876	220	109
Map of F. G. Bartel's claim	221	110
Receipts	224	111
Lease, Gaines to Morris, July 1, 1875	225	112
Deed, Huff to Bartels, November 29, 1876	227	112
Deed, Morris to London, May 27, 1876	227	113
Affidavit for revival of cause	228	114
Order consolidating claims	229	114
Testimony of James F. Morris	229	115
Perry Huff	231	116
Frank G. Bartels	231	116
Findings of commission	233	117
Testimony of Otto Neubert	235	118
John J. Sumpter	237	120
F. Schicker	240	121
Philip A. Helfrich	241	122
Final decree	245	124
Order filing cost bond	246	125
Order on motion to set aside decree	246	125
Motion to set aside decree	247	126
Order filing motion to strike motion to set aside decree	249	127
Motion to strike motion to set aside decree	249	127
Order filing allowance of supersedeas	250	128
Order granting time to file supersedeas bond	250	128
Order filing bond	251	128
Order approving bond	251	128
Bond	251	129
Clerk's certificate	253	129

1 Be it remembered that on the 23rd day of May, 1884, came into the office of the clerk of the circuit court of the United States for the eastern district of Arkansas William H. Gaines and wife, by M. W. Benjamin and R. G. Davies, Esqs., their solicitors, and filed therein, on the chancery side of said court, their bill of complaint against Annie Bartells *et al.;* which complaint is as follows:

United States Circuit Court, Eastern District of Arkansas, October Term Thereof, 1884.

WILLIAM H. GAINES and MARIA GAINES, His Wife, Plaintiffs,
vs.
ANNA BARTELLS and MAGGIE BARTELLS, Heirs of Frank G. Bartells, and OTTO NEUBERT, Defendants.

William H. Gaines and Maria Gaines, his wife, bring this suit against Anna Bartells and Maggie Bartells, heirs of Frank G. Bartells, and Otto Neubert, and for cause of action allege that in the year of 1851, in pursuance of the instruction of the Secretary of the Interior, plaintiff Maria Gaines, Albert Belding, Henry Belding, and George Belding, heirs and legal representatives of Ludovicus Belding, entered, under the pre-emption laws of the United States, the southwest quarter of section thirty-three, in township two (2) south, range nineteen (19) west, for which they paid the United States Government two hundred dollars, which was advanced and paid by plaintiff Wm. H. Gaines, and which money the United States still retains. At the time of said entry a small portion of said land was occupied by Mrs. Lydia Belding, widow of Ludovicus Belding, and

2 the portion of said lands for which this suit was brought was occupied by —— ——, and in — Wm. H. Gaines, Maria Gaines, Albert Belding, Henry Belding, and Geo. Belding, under the supervision and control of Wm. H. Gaines, brought suit in the Hot Springs circuit court against —— —— and recovered judgment for the possession of said land, which judgment was afterward affirmed by the supreme court of the State of Arkansas and by the Supreme Court of the United States, and on the — day of ——, 1856, Wm. H. Gaines was, by the sheriff of Hot Springs county, put into the possession of said property by virtue of a writ of possession issued upon the judgment of said Hot Springs circuit court in obedience to the mandates of said supreme court, both of the State and of the United States, and said plaintiffs, Wm. H. Gaines — Maria Gaines, his wife, remained in peac-able and quiet possession of said property until the 1st day of June, 1876, when they were dispossessed of said property by a receiver appointed by the Court of Claims of the United States under an act of Congress entitled "An act in relation to the Hot Springs reservation, in Arkansas," approved June 11th, 1870.

Plaintiffs entered into possession by virtue of said entry and by virtue of the decision of said State and United States supreme courts and the writs issued in pursuance of said judgments, and continued in possession for a period of about twenty years, until the Supreme

Court of the United States, in a suit to determine to whom the patent should issue, decided that said lands were not subject to pre-emption or entry, and that no claimant was entitled to a patent, *p*ut the same was still the property of the United States, *w*hich decision was rendered April 24th, 1876. Plaintiff- during said twenty years paid taxes on said property and fenced and built houses on the same and otherwise improved the same. In — plaintiff Wm. H. Gaines, being duly authorized by said Belding heirs, leased a lot of ground, which has since been laid off into lots and blocks by the Hot Springs Commission in pursuance of an act of Con-
3 gress and is now known as lot (17) seventeen and block (68) sixty-eight, of J. L. Morris, which lease was for the term of one year, to be renewed at the election of the lessee from year to year until the title to the Hot Springs quarter section of land was settled, for an annual rent of —, payable in monthly installments of —.

Said lease also provides that all buildings and improvements erected on said lot by the lessee might be removed therefrom during the continuance of the lease or within thirty days thereafter, but that no buildings or improvements erected could be removed while said rent or any part thereof remained due and unpaid. It also provides that the lessor should have a lien on all buildings and improvements to secure the rent, a copy of which is hereto attached in Exhibit "A" and made a part hereof.

Said lessee took possession of said land under and by virtue of said lease only, and in no other way whatever, and he and — assigns occupied the same under said lease until the 1st day of June, 1876. At that time the United States Government dispossessed all parties to this suit from said lands and took actual possession thereof and leased said lands and improvements in the name of the United States Government, through A. O. Morgan, a receiver appointed by the U. S. Court of Claims for that purpose, and continued in the legal possession thereof until the same was entered at the U. S. Land Office, to wit, October 4th, 1881.

That on the 24th day of April, 1876, said lessee and *their* assigns owed the lessor for rent the sum of ——. Said lessee and *their* assigns failed to remove said buildings and improvements erected by them at any time during or within thirty days after the expiration of the lease, and by virtue of the provisions of the lease said buildings and improvements erected by said lessee and *their*
4 assigns became the buildings and improvements of Wm. H. Gaines. That on the 27th day of September, 1881, Annie and Maggie Bartells, heirs of Frank G. Bartells, lessee, sold and transferred to Otto Neubert all their right, title, and claim to said premises, and he, said Neubert, well knowing before said transfer all the terms and conditions of said lease, which transfer was made without the knowledge or consent *if* the plaintiff; also knowing that Frank G. Bartells' only right to the possession of said ground was a lease from plaintiff, and that his only right of purchase came through and by said lease, and well knowing plaintiff's right in law and equity to said premises by virtue of being the landlord of said Bartells.

Plaintiffs, by arrangement with George, Henry, and Albert Belding, having become the owner of said claim, to wit, b- a deed from Albert, Henry, and George Belding for one-half of each of their claims to the pre-emption claim of Ludovicus Belding to Wm. H. Gaines, dated June 1st, 1860, a copy of which is hereto attached, marked Exhibits —, and made part hereof; also a deed from Albert Belding to Wm. H. Gaines for his interest in said claim, dated —, a copy of which is hereto attached, marked Exhibit — and — part hereof; also deed from Geo. Belding for his interest, dated —; also deed from Henry Belding for his interest, copies of which are made Exhibit "A" hereto—aver that in less than six calendar months after the first sitting of the Hot Springs Commission, under the act of Congress of the United States entitled "An act in relation to the Hot Springs reservation, in the State of Arkansas," approved March 3, 1877, they filed their claim before said commission to purchase said lot, and that Frank G. Bartells filed a like claim, and upon the hearing of said claims they were consolidated by said commission for the purpose of hearing the testimony; and said petitions filed and the testimony taken before said commission clearly showed that Frank G. Bartells had acquired his *position* in no other way but by said lease made by plaintiff Wm. H. Gaines to said
5 —— ——, as will more fully appear from a complete copy of the petition, testimony, and record entries in said claim, filed herewith and marked Exhibit "A" and made part hereof; and notwithstanding said petition and testimony showed that defendant Frank G. Bartells acquired possession by virtue of said lease, still said commission misconstrued the law applicable to that state of facts and awarded the right to purchase said lots to defendants Annie Bartells and Maggie Bartells, heirs of Frank G. Bartells, who died before the award was made, and since said award said defendant has purchased said lots from the United States and received a patent therefor, and on account of said misconstruction of the law as applied to the facts before said commission the right to purchase said lots, which in law, equity, and good conscience should have been awarded to plaintiffs, was by said misconstruction of the law illegally and wrongfully awarded to defendants Annie and Maggie Bartells, heirs of Frank G. Bartells, by said Hot Springs Commission.

Plaintiffs aver that as defendants have never had any other right or title to said lots or to the possession thereof than that which they derived from said lease and under covenants to restore possession to plaintiff Wm. H. Gaines, that said defendants should be held to hold said lots as trustees for the use and benefit of plaintiffs.

Plaintiffs offer to pay any sum of money that may be found due to the defendants or either of them by reason of any money paid to the United States for the purchase of said lots, and to do all other acts which may be found just and equitable. Plaintiffs aver the property herein sued for is worth more than five hundred dollars, and that this cause of action arises wholly under the law of the United States.

Plaintiffs ask that defendants be required to answer, but not under

oath; and they pray that an account may be taken of the state of accounts between themselves or either of them and said defendants severally; that they may be allowed reasonable rent for the occupancy of the said premises; that defendants may be decreed to hold said lots as trustees for the plaintiffs and convey the same
6 to the plaintiffs, and that they may have such other relief as may be equitable.

M. W. BENJAMIN,
R. G. DAVIES, *Solicitors.*

Good for costs.
M. W. BENJAMIN.

(Endorsed:) Filed and writ issued May 23rd, 1884. Ralph L. Goodrich, clerk, by W. P. Feild, D. C.

UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 14th day of April, anno Domini one thousand eight hundred and eighty-four, at the United States court-room, in the city of Little Rock, Arkansas, the Hon. David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

And on July 5th, 1884:

WM. H. GAINES and WIFE
vs.
ANNIE BARTELLS and MAGGIE BARTELLS, Heirs of Frank G. Bartells and Otto Neubert. } 657.

Come the defendants, by John M. Harrell, Esq., their solicitor, and enters therein their appearance.

And on August 7th, 1884, as follows:

7 WM. H. GAINES *et al.*
vs.
ANNA BARTELLS *et al.* } 657.

Come Anna Bartells, Maggie Bartells, and Otto Neubert, by John M. Harrell, Esq., their solicitor, and, by leave of court, file herein their answer, cross-bill, and demurrer; which answer, cross-bill, &c., are as follows:

United States Circuit Court, Eastern District of Arkansas.

WM. H. GAINES and MARIA GAINES, His Wife, Pl'ffs,
vs.
ANNA BARTELLS and MAGGIE BARTELLS, Defendants.
} Answer & Cross-Bill.

The said defendant Otto Neubert, for answer to the complaint of the plaintiffs, William H. Gaines and Maria Gaines, states:

1st. That said Annie Bartells and Maggie Bartells, the other persons above named, made parties defendant, have no interest in the lot of land and improvements in controversy, but conveys the same and all th-ir interest therein, now deschibed on the official map of the United States reservation of the Hot Springs, in Arkansas, as lot seventeen, in block sixty-eight, by their joint deed to him for the same, dated September the 27th, 1881, for the consideration
8 of one thousand dollars paid them by him therefor, a copy of which said deed is appended hereto and prayed to be made a part hereof.

2. Defendant further states that on the 1st January, 1876, or before that time said Annie Bartells and Maggie Bartells obtained possession of said lot, then being vacant and unoccupied ground of the United States, and erected the house and improvements thereon at their own cost and afterwards greatly improved the same, and in right of said improvements applied within six months after the first sitting of the Hot Springs Commission appointed under the act of Congress approved March 3rd, 1877, to lay off and dispose of said reservation, and within twelve months after the approval of said act to have the preference right to purchase the same under the provisions of said act, and, upon the evidence offered by them in support of said claim, were by said commission, December 29th, 1879, duly awarded said right, and, having subsequently paid the price to the proper officer of the United States required to be paid therefor, received therefor the patent certificate of the United States conveying them title thereto.

3rd. Defendant further states that at the time said improvements were erected on said lot the same was land of the United States reserved for the future disposal of the United States, not to be located or appropriated for aoy other purpose, by the act of Congress approved April 20th, 1832, and said land had not been disposed of and no valid entry thereof had been made with aoy register and receiver of the United States or pre-emption right acquired thereto by any person or persons; that it is not true, as in said complaint stated, that in 1851 or at any other time the heirs of Ludovicus Belding entered said land, because the same was not rubject to entry and location after the passage of the act of reservation aforesaid, and said Belding and heirs had failed to perform the conditions annexed to a claim of pre-emption on his or their part under the law then in force in not making proof of settlement or improvement within the time prescribed by law for making said proof, and acquired
9 no right or vested interest in said land prior to said act of April 20th, 1832.

It is true that said Belding occupied a part of the S. W. ¼ sec. 33, T. 2 S., R. 19 W., as a tenant of one John Percifull, but was not permitted to enter said quarter section for the causes aforesaid by the register and receiver of the land office in which the same — situate, and in 1831, at the expiration of his said lease, surrendered possession of all the land he had ever so occupied on said quarter section to said John Percifull; that after the death of said Belding William H. Gaines, one of the complainants, applied to enter said quarter section in 1851, under the provisions of the act of July 14th, 1832, by virtue of his occupation as tenant of Percifull and improvements thereunder as aforesaid, when the time for said proof of settlement or improvement had expired, and said Gaines was, under the instructions of the Secretary of the Interior, permitted to pay the entrance money for said quarter section and to have issued to him a conditional certificate of entry therefor, with instructions to the register and receiver to note thereon and in their books and return to the General Land Office that said entry was not an interference with the New Madrid location of Francis Langlois, No. 467, and that it embraced land directed to be reserved from sale or entry by the act of Congress of April, 1832, and said instructions declared that all rights were reserved under said last-mentioned act in the premises, which said entry was subsequently, when it came before him regularly for his consideration, by the Secretary of the Interior vacated and held for naught, and was thenceforth held void by every court of the State of Arkansas having jurisdiction of controversies in regard thereto and by every department of the Government of the United States, and defendant pleads the decree of the supreme court of Arkansas, to which plaintiffs were parties, in the cause before it involving the validity of said entry, entitled Gaines *vs.* Hale and Rector and Rector *vs.* Hale, on cross-appeal, rendered at the December term of said court, 1870, as conclusive of the want of any claim or right or color of title to the plaintiffs under this act.

4. The defendant further states that under provisions of an act of Congress entitled "An act in relation to the Hot Springs reservation, of the State of Arkansas," which was passed May 31st, 1870, and became a law, as provided by the Constitution, the p-aintiffs instituted their suit against the United States in the United States Court of Claims for title to said lands, in which cause certain proceedings were had; that on the 25th day of April, 1875, a decree was rendered against the said plaintiffs, and said entry and their title thereunder was, by said Court of Claims, declared void; that from said decree plaintiffs appealed to the Supreme Court of the United States, in which — such proceedings were had that on the 24th day of April, 1876, the said judgment and decree of the Court of Claims was affirmed without dissent, and under provisions of said act of May 31st, 1870, said Court of Claims in said cause appointed Albert O. Morgan receiver to take charge of and rent out all the property on said reservation; that said receiver qualified and, in discharge of his duties under said decree, ousted and evicted the plaintiffs from all their possessions on said reservation, and said receiver practically

evicted said defendant, demanding rent for said premises, which rent, upon said demand, defendant paid to him under a written lease of such receiver to defendant, and thereby attorned to as owner, having paramount title to said land; and defendant prays leave to exhibit so much of said proceedings of said Court of Claims as may be necessary to show that the plaintiffs were parties thereto, the subject-matter thereof, and the final decree of ouster therein by appointment of said receiver; and defendant sets up said decree of said Court of Claims as a complete bar to all pretenses of claim of the plaintiffs.

11 5th. Defendant states that it is not true that defendants filed their claim to the lot in controversy within six calendar months after the first sitting of said commission, but, on the contrary, plaintiff filed an omnibus claim by one petition covering all their ancient pretended entry except such parts as were conceded to them by claimants of like ancient pretended claims and locations; which claim of plaintiffs so filed included a great part of the city of Hot Springs, by far the greater part of which had been held adversely to the said claim of plaintiffs and to said pretended entry of Ludovicus Belding for fifty years or from the time said John Percifful took possession of said quarter section and, being so in possession, leased to said Belding as aforesaid.

6. That at the time said lot was awarded to them a great number of the lots in said reservation were awarded to plaintiffs, also worth two hundred thousand dollars, and plaintiffs acquiessed in said awards, as well as to lots awarded to themselves as to lots awarded to this defendant's vendors, and repeatedly declared their acquiescence in said awards and sent an agent to Congress, in fact, to defeat any and all bills providing for an appeal from or review of the awards of said commission; also acquiesced by approving and advising purchasers of lots theretofore claimed by them before said commission but awarded to others, and defendant pleads this an estoppel of plaintiffs to proceed in this action against him.

7. And this defendant further states that he was in possession of the said premises under a purchase thereof September 27th, 1881, from said Annie Bartels and Maggie Bartels, who made said improvements and to whom said lot was awarded in December, 1879, and patented as aforesaid, and no objection was ever interposed by plaintiffs to said patent or said conveyance.

8. Defendant states that the pretended lease of plaintiff to Louis Bartells was by parol and void by the statute of frauds and
12 was the lease of W. H. Gaines individually and not of the heirs of Belding.

9. Defendant denies that he acquired title through said lease and avers that he received title thereto by virtue of his purchase of said improvements from said Annie and Maggie Bartels.

And defendant asks that the demurrer and cross-bill pleaded in the case of the same plaintiffs against Patrick Dugan and others may be considered as pleaded in this case.

OTTO NEUBERT,
By his attorney, JOHN M. HARRELL.

(Endorsed:) Filed August 7th, 1884. Ralph L. Goodrich, clerk, by W. P. Feild, D. C.

UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 27th day of October, anno Domini one thousand eight hundred and eighty-four, at the United States court-room, in the city of Little Rock, Arkansas, the Hon. David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On December 1st, 1884:

WM. H. GAINES and WIFE }
vs. } 657.
ANNA BARTELS *et al.* }

The plaintiffs, by M. W. Benjamin, Esq., their solicitor, ask leave to amend their complaint by interlineation, which is granted; and thereupon said amendments are made.

13 And on June 5th, 1885, as follows:

WM. H. GAINES and WIFE }
vs. } 657.
ANNIE BERTELLS *et al.* }

Come the complainants, by M. W. Benjamin and R. G. Davies, Esqs., their solicitors, and file herein their replication to defendants' answer; which replication is as follows:

U. S. Circuit Court, Eastern District of Ark., October Term, 1884.

GAINES and WIFE }
vs. }
BARTELLS *et al.* }

The said plaintiffs say that their bill is true and that the answer of the defendants as set forth is not true, and this they are ready to verify.

M. W. BENJAMIN,
R. G. DAVIES,
Solicitors.

(Endorsed:) Filed January 20th, 1885. Ralph L. Goodrich, clerk.

And on February 2nd, 1885, as follows:

WM. H. GAINES and WIFE
vs.
ANNA BARTELLS *et al.* } 657.

14 And, the said complainants having obtained leave of the court to file an amended complaint herein, leave is hereby granted the said defendants within thirty days from and after the date of this order to file an amended answer.

And on March 2nd, 1885, the following amended answer was filed:

United States Circuit Court, Eastern District of Arkansas.

WILLIAM H. GAINES and MARIA GAINES, His Wife, Pl'ffs,
vs.
ANNIE BARTELLS and MAGGIE BARTELLS and OTTO NEUBERT, Defend'ts.

Answer of Otto Neubert.

Comes the said defendant, Otto Neubert, and, leave of the court being had, for amended separate answer to the bill of complaint of William H. Gaines and Maria Gaines, his wife, defendant saith:

This defendant, reserving all exceptions and advantages that may arise to him from the many errors and insufficiencies of the said complaint, for his separate answer thereto saith—

That he denies the truth of the statement contained in said complaint that Maria Gaines, Albert Belding, Henry Belding, George Belding, as heirs of Ludovicus Belding, entered, under the preemption laws of the United States, the southwest quarter of section thirty-three, in township two south of the base line, in range nineteen west of the fifth principal meridian, in the year 1751, or that they received judgment for it, or paid the Government of the United States for it, or were put in possession of it by virtue of a writ of possession issued to the sheriff of Hot Springs county in 1866,

15 upon a judgment of the Hot Springs circuit court, in obedience to mandates of the State and United States supreme courts, or that they occupied it under any claim of right and otherwise improved it, or that they paid taxes upon it, or that said plaintiffs became owners of it by any deeds of Albert, George, and Henry Belding.

He denies that defendaots failed to remove the improvements erected by them on said land, and that the said improvements became the property of the plaintiff William H. Gaines by such failure; that defendants or either of them owed said plaintiff any sum for rent on the 24th day of April, 1876; that the award of the right to purchase said lot in controversy from the United States to this defendant by the Hot Springs Commission was wrongful, or that said commission "misconstrued the law applicable to the facts," or that

said defendant Neubert acquired possession only by virtue of the alleged lease from plaintiffs to said Annie Bartels and Maggie Bartels, transferred to this defendant, Otto Neubert, September 27th, 1881.

On the contrary thereof, defendant saith that said plaintiffs' claim before said commission was not in right of said Albert, Henry, and George Belding or said Maria Gaines, as heirs of said Belding, who had, as they well knew, no right to enter said land or prefer a claim under the act for disposing of said lot; that the only possession they or their ancestors ever had of said land was as tenants of John Percifull and those claiming under him, who himself had no right to enter or claim said land; that said land war not at any time subject to entry from and after April 20th, 1832, to the date of the award by the said commission to this defendant; and defendant avers the truth to be that, under instructions of the Secretary of the Interior, Hon. H. H. Stewart, dated November 21st, 1851, stated "that said entry would remain subject to the same power, revision, and control by the General Land Office and this department as may be lawfully exercised over any ordinary entry," an illegal and void entry of said land was permitted to plaintiffs in order that they might contest the same with John C. Hale, who occupied parts of said quarter section, but not any part of the land for which
16 this action is instituted, and thereon recovered against said Hale the alleged judgment; but thereafter, in a suit by said Hale, to which H. M. Rector was also a party, in the same court, the plaintiffs and said Albert, Henry, and George were parties, because said certificate of entry on which said alleged judgment was based was held and decreed to be void and of no effect and plaintiffs perpetually enjoined from executing said judgment by a decree which the supreme court of Arkansas and of the United States affirmed.

That said certificate of entry, coming on regularly for the consideration of the Secretary of the Interior, the Hon. Jacob Thompson, in 1860, was vacated an- set aside.

That said alleged entry has thenceforth been held void, in suits and proceedings in which the plaintiffs were parties or after asserting right of pre-emption, by every court having jurisdiction, State and Federal, and by acts of Congress reserving said section for the future disposal of the United States, not to be located or appropriated for any other purpose whatever, in cases for the submission of the rights of all claimants to the Court of Claims and for the disposal of the same by the commission, with power to perpetually reserve any part of it to the United States—in a word, by every department of the Government, executive, legislative, and judicial.

And said plaintiff, William H. Gaines, declared in his testimony before the Hot Springs Commission, appointed under the act of Congress of March 3rd, 1877, to lay off said reservation into blocks, lots, and streets, the lines of which were to correspond with existing boundary lines of occupants, as nearly as may — consistent with the interest of the United States, after having enumerated all his purchases from settlers on the reservation, and the houses and improvements erected by him and the cost of the same, in answer to the

following questions propounded to him on cross-examination by John M. Harrell:

Q. "Whose property did you claim that to be in 1858—those cabins and that rail fence?"

17 A. "I was acting as agent for the Belding heirs, but I claimed the house that I put up as my own; they were put up and purchased with my own money."

Q. "Those houses that were standing there just before the war you claimed, did you?"

A. "No, sir."

Q. "Which was the property of the Belding heirs?"

A. "I have a transfer from them; it is all mine."

Q. "Were those transfers made prior to your petition in bankruptcy?"

A. "Very recently; since they have been hunted up to give me trouble."

Q. "Did you put in any of this property in your petition in bankruptcy?"

A. "I did not. I consulted my lawyer, Judge Watkins, who knew all about it, and he said it should not go in. I went through bankruptcy and was honorably discharged seven years ago."

Q. "When did you file you- petition in bankruptcy?"

A. "I cannot recollect the date."

Q. "Did you transfer it then to the Belding heirs?"

A. "No, sir."

Q. "In whose right do you now make your claim to this property?"

A. "In the right of Maria Gaines and myself."

Q. "Did the Belding heirs file any petition?"

A. "No, sir; I am controlling it all myself."

Q. "Did you pay any taxes on this property in your own name?"

A. "No, sir; in the name of the Belding heirs."

These answers were taken as corrective of the statement of his testimony-in-chief in the same examination, in which the said witness stated, "I know of no one else that has paid any taxes upon said lands or ever pretended to give them in for assessment.

18 I so strongly believed that the property was mine and that I would get a title to it that I paid the taxes for 1875 only a few days before the decree of April 24th, 1876."

That said alleged judgments at law in favor of said heirs were rendered upon said conditional certificate, under a statute of the State of Arkansas, which provides that—

"Where any improvement has been made on public land of the United States, whether the land has been surveyed or not, and where any other person than those to whom the right has been given by the preceding clause in this section is in the possession of such improvements" ejectment may be brought for possession of such improvements, and the court of equity which enjoined said judgment held that the plaintiff- had a possessory right and title to the improvements made by them as against said Hale and Rector, con-

tending for a part of said section, and it was decreed that each of the parties to said suit have title to their respective improvements made by them against each other, and that each and all of the parties be enjoined from enforcing the said judgment at law.

That April 20th, 1832, in disregard of the pretended pre-emption of the heirs of Belding, the Congress of the United States passed an act reserving said quarter section and three and three-quarters of sections adjoining "for the future disposal of the United States, not to be located or appropriated for any other purpose whatever," whereby said land was withdrawn from entry and sale and was no longer "public land of the United States" in the sense in which the term "public land" could be intended in said statute, and general laws of the State and the United States were not applicable to said lands so reserved, since which act of reservation a large part of said quarter section, to wit, the Hot Springs mountain reservation, has been forever reserved from sale or entry under the provisions of the act of Congress in that behalf made and provided.

As to the alleged lease of said Annie and Maggie Bartells, he states that on the — day of ——, 18—, said Annie and Maggie ac-
19 cepted a lease from William H. Gaines of the land now known as lot seventeen, in block sixty-eight, as laid off and platted by the said commission; that said lease and all property of said Annie and Maggie was transferred to this defendant by deed executed September 27th, 1881, a copy of which deed is appended hereto, marked Exhibit "A," and prayed to be made a part hereof, after patent issued to said Annie Bartells and Maggie Bartells, with the consent of William H. Gaines and Maria Gaines, and embraced all the improvements then standing on said lot; that said improvements were made by the money, materials, and labor of said Annie Bartells and Maggie Bartells prior to the 24th day of April, 1876, and were by plaintiffs regarded and conceded to be the property of said defendants; that said lease was for the term of one year, at the election of said lessee; that it also contained a covenant which stipulated that all improvements that might be erected on the ground leased should be and remain the property of the lessees, and that the lessees should have the right to remove said improvements at any time within thirty days after the end of the term of lease, as alleged in said complaint; that said lease contained no stipulation that said improvements were to become forfeited to the plaintiffs; that said term was tacitly renewed, according to the provisions of said lease, on the — day of ——, 18—. The said lessees continued to pay plaintiff rent, in accordance with the covenants of said lease, until the decision of the Court of Claims of the United States declaring said entry void and the property of all kinds on said reservation the property of the United States, rendered April 25th, 1875, and until the affirmance of said decision on appeal from said Court of Claims by the Supreme Court of the United States April 24th, 1876.

That under the provisions of said act of 1870 the said Court of Claims in said cause appointed a receiver, to wit, Albert O. Morgan, to take charge of and rent out all of said property on said reserva-

tion; and, having qualified as such receiver, said Morgan entered upon the duties of said office and, under said decree, on the
20 1st day of June, 1876, ousted the plaintiffs of all their possessions on said reservation, as stated in plaintiffs' complaint and by said William H. Gaines in his testimony before the said Hot Springs Commission as a witness in his own behalf in support of his claim to said lot and other lots to which he and said Maria Gaines preferred claim before said commission under the act of March 3rd, 1877.

Said witness stated, in the course of his testimony-in-chief:

"When A. O. Morgan, the United States receiver, took possession I was the first man on the reservation to turn over my property to him. I turned all over—all property built by myself—both that held in person and that held by my tenants."

That after hearing of the said judgment of affirmance of said decree of said Court of Claims said Wm. H. Gaines, for himself and as agent for Maria Gaines, his wife—he war desirous of accepting the rent to said date of April 25th, 1875, and release said Anna and Maggie and all his tenants, and proposed to make this arrangement with defendant-, to which said defendants fully agreed, and paid all rent due or claimed by plaintiffs thereunder, and by adjustment, well understood, that the relations of tenant theretofore held by said defendants under said lease was discontinued; that, in fact, as a result of said decision and the instructions of said Court of Claims to said receiver, said defendants no longer held said property under said lease or by permission of said receiver, but that both plaintiffs and defendants were evicted therefrom by the United States, having paramount title, without procurement of defendant.

That thenceforth from the expiration of the plaintiffs' title to said land Annie and Maggie, being in occupation of said improvements so erected by them as aforesaid and being prevented from removing the said improvements by said orders and instructions of the Court of Claims, *was* notified by said receiver ttat he would exercise the right to evict them therefrom unless they would attorn to and take from said United States a new lease; and upon said demand said Annie Bartells and Maggie Bartells, June 1st, 1876, toog
21 said lease from said receiver, yielding *his* title in said improvements to said United States.

That they were all by said demand of said receiver, under his said instructions, practically expelled and evicted therefrom and the title and possession of said plaintiffs to said ground determined, and the official acts of said receiver in this behalf — of public notoriety.

That explicit disavowal and -isclaimer of holding thereafter under said plaintiffs was by said Annie and Maggie announced to plaintiffs and plaintiffs' acquies-ence publicly announced, as testified by plaintiff William H. Gaines before said commission, that they "disclaimed owning anything until the act of Congress was passed," meaning the act of 1877, and, so acquiescing, pointed out said lot to said receiver, and told him to take possession of it and of said improvements, which said receiver, in effect, did as aforesaid; and so plaintiffs' covenant in said lease to protect said lessees in the removal

of said improvements, as well as the implied covenants of right of possession to said lot and quiet enjoyment, were annulled, as was also said lease entire.

That said plaintiffs' covenant in said lease, whereby they stipulated with said lessee that lessees should continue in possession of said improvements erected by lessees and have the right to remove them within thirty days, was thus broken and rendered impossible of fulfilment by the decrees and orders of said courts and acts of said receiver, whereby said lessees were wholly deprived of the express stipulation with plaintiffs under which they erected said improvements and the right to remove said improvements, and all rights of said plaintiffs in said lot and improvements determined and said lessees compelled to attorn to the United States and take and occupy the same under said new lease executed to *him* by said receiver.

That said lessees held under said receiver until March 3rd, 1877, when the law under which said receiver was so appointed was, by act of Congress of that date, modified and repealed so far as to revoke the appointment of said receiver, and that from the eviction of said plaintiffs by said commission and the occupation by said
22 lessees of said premises under his said demand, assertion of title and right of possession under United States to the present time and conveyance aforesaid to defendant Otto Neubert, this defendant has been in continuous, open, and notorious possession of said lot and improvements under claim of right and adversely to plaintiffs a period of more than seven years next before the commencement of this suit; that plaintiffs abandoned all claim to the leased premises from and after the said decision of the Supreme Court of April 24th, 1876, until the passage of the act of March 3rd, 1877.

Defendants pray leave to exhibit so much of the said proceedings in said Court of Claims of the United States as may be necessary to show that plaintiffs were parties thereto, the subject-matter thereof, the final decree of ouster therein by the appointment of said receiver, the instructions to said receiver under said appointment, and the report of said receiver, the lease executed by him to defendant, the petition of defendant filed before said commission and the award thereon, together with the patent certificate issued to defendant in compliance with said award and the disclaimer of said Wm. H. Gaines, contained in his said testimony, which was filed with his petition before said commission, and pleads the same as a complete *par* to all the pretenses of claim in this cause on the part of plaintiffs.

And, as a farther bar to the plaintiffs' pretenses of claim in this cause, defendant states that the act of Congress approved June 16th, 1880, after the adjudication and award by said Hot Springs Commission and the filing of the map and survey with the boundary lines of each claim clearly marked thereon, and the schedule showing the name of each claimant and the lot and parcel of land awarded to each, with the appraised value thereof, filed with the Secretary of the Interior and by him reported to Congress, was a statutory confirmation of the awards of said commission so reported

and a legislative grant creating a conditional estate, conditional upon the payment of forty per cent. of the value so affixed to each lot by said appraisement to the persons named in said schedule of the lots and parcels of land so awarded to each and returned
23 on said findings and map; that by the findings and award of said commission and schedule, return, and map of said commission so filed and affirmed as aforesaid lot numbered seventeen, in block numbered seventy-seven, was adjudicated and granted to Annie Bartells and Maggie Bartells upon the payment to the United States by them of the sum of eighty dollars, and that subsequently, and within the time required by the act of Congress in that behalf provided, they paid said sum of money to the officer and agent of the United States appointed to receive the same and received the patent certificate of the United States to said lot in conformity with said award, return, and grant, and that between the date of said award and the passage of said act of 1880 and payment of said price no change or fact affecting the plaintiffs' right to said lot since award and grant had occurred, and on the 27th September, 1881, conveyed said lot to defendant Otto Neubert.

Defendant states that it is not true that plaintiffs paid taxes on said *said* lot 17, in block 68, or upon defendant's improvements thereon; that by the laws of said State and the United States only the improvements on land supposed to be public land of the United States could be assessed for taxation by the State and county within which the same is situate, and said improvements were assessed to this defendant, who paid the taxes thereon and all the taxes ever paid upon said improvements, as the owner thereof, and upon the lot itself, since the issuance of said patent, and said defendant erected the improvements now standing and in his possession on said premises at a cost of about $2,000, with the knowledge and acquiescence of said plaintiffs; that from date of said award to defendant, — October, 1879, plaintiffs have openly acquiesced in said award and actively opposed any and all efforts to set aside the same by judicial review or legislative action, and contributed money to pay agents for aiding in creating influences that would prevent the passage of a law or laws by Congress to dispute said awards, as the defendant is informed and believes, whereby defendant was led to consider himself secure in the title to said property under said patent of the
24 United States and deed of conveyance, and has paid taxes, assessments, and impositions on said property, which were, after issuance of said patent, assessed for State, county, and municipal taxes and impositions as other property in said State, and has been at great expense filling up said lot and repairing said improvements.

And, further answering, this defendant saith that if the plaintiffs procured from said Albert, Henry, and George Belding the deeds mentioned in their said complaint that said Albert, Henry, and George had nothing to convey by said deeds, and it does not appear from said complaint that said deeds were ever recorded, and said deed of Albert is alleged to have been executed on the 20th of October, 1877, after the expiration of the time under which claimants

might assert their rights to any part of said reservation under the act of 1877.

Said Belding heirs as such filed no petition for the right to purchase lots on said reservation under said act of 1877, and were forever barred of all right or claim under said act.

It is true that plaintiffs, Wimmiam H. and Maria Gaines and said Annie and Maggie, within six calendar months from the organization of said board of commissioners, filed before them conflicting claims to said lot, and the testemony of the said William H. Gaines, recited herein, was rendered in the course of the evidence in the trial of their respective rights before said commission upon said petitions.

Defendant further saith that when said lease was made neither plaintiff nor said heirs of Belding had possession of said lot; that the same was vacant and the title to it in the United States.

Defendant denies that said commission misconstrued the law and awarded said lot to said Annie and Maggie Bartells, when they should have awarded it to plaintiffs; that by reason of the improvements made thereon by said Annie and Maggie, no right in which was ever acquired by plaintiffs, *by* any right *he* might have had under said lease was terminated, as was shown by the laws and the testimony, and said commission awarded the said lot to defendant, as they should have done.

25 That the allegations in said complaint that said lease contained a covenant by which the improvements of defendant were to be forfeited to plaintiffs is untrue, and plaintiff- utterly failed to prove the same; but if contained in said lease said lessees were in no default, and that said lease was for an illegal purpose and void.

Defendant denies that the testimony taken before said commission in the adjudication of the respective claims to said lot showed that said Annie and Maggie Bartells acquired possession of said lot solely under the lease by plaintiffs, but, on the contrary, he states the truth to be that said testimony showed that said lessees were induced to accept possession of the vacant ground of said lot by fraud and mistake in supposing said void entry gave plaintiffs title to the same and — so induced to erect said buildings thereon, and that lessees were deprived of the possession thereof by the United States — decreed to have paramount title to said lot without and collusion or procurement of said lessees, and that by reason of said improvements so erected by lessees on said land of the United States, in which plaintiffs had no interest, — was entitled to the preference right to purchase the said lot at the price required to be paid therefor under said act of Congress of March 3rd, 1877, and said supplementary act of June 16th, 1880.

And said defendant further saith that if there are other matters alleged in said complaint not herein expressly denied or admitted they are untrue.

Defendant states that he purchased all th- right of said Annie and Maggie in said lease and improvements, and they have no interest in this suit.

And, having fully answered, defendant demurs to said plaintiffs'

complaint, and prays to have the benefit of his demurrer on the final hearing for the following causes:

1st. There is no equity upon the face of plaintiffs' complaint.

26 2nd. Said complaint discloses a final adjudication of the matters in controversy by a tribunal clothed with full power to finally adjudicate the same.

3rd. Said complaint is otherwise informal and insufficient.

Cross-Bill.

And by way of cross-bill said defendant, Otto Neubert, saith that he is owner of valuable improvements erected upon said lot, which cost in making and are of the value of two thousand dollars, and was the owner of said improvements at the entry of said lot in the United States Land Office, and — granted said patent certificate as aforesaid upon payment of said purchase-money, and has paid all taxes and assessments, State, county, and city, since the date of said purchase, amounting to five hundred dollars.

And should it turn out in proof and the court be of opinion that said entry was for the benefit of plaintiffs, then it was an entry of the improvements of this defendant, erected in the belief that defendant had a good title to said lot under said award to land of the United States, and plaintiff did not institute said action within three years next before the commencement of this suit.

Wherefore he prays that he may be decreed against the plaintiffs the full value of said improvements and his taxes and assessments so paid thereon and on said lot, and that the same may be a lien on said lot until paid, and that he be discharged hereof with his costs.

JOHN M. HARRELL,
Solicitor for Defendants.

I certify that in my opinion the foregoing demurrer is well founded in point of law.

JOHN M. HARRELL,
Solicitor for Defendants.

27 STATE OF ARKANSAS, }
County of Garland. }

D. D. Shipley states that the demurrer to plaintiffs' complaint is not interposed for delay, and the foregoing pleas are true in point of fact, and he believes that the statements contained in his said answer are true.

—— ——.

Subscribed to in my presence and sworn to before me this — day of ——, 1885.

—— ——.

Know all men by these presents that we, Annie Bartells and Maggie Bartells, for and in consideration of the sum of one thousand dollars to us in hand paid by Otto Neubert, the receipt of

which is hereby acknowledged, do hereby grant, bargain, sell, and convey unto the said Otto Neubert and unto his heirs and assigns forever the following lands, lying in the city of Hot Springs, county of Garland and State of Arkansas: All of lit numbered seventeen (17), in block numbered sixty-eight (68), according to the survey and returns of the Hot Springs Commission; to have and to hold the same unto the said Otto Neubert and unto his heirs and assigns forever, with all appurtenances thereto belonging; and we hereby covenant with the said Otto Neubert that we will forever warrant and defend the title to said lands against all lawful claims whatever.

Witness our hands and seals on this 27th day of September, 1881.

her
ANNIE x BARTELLS.
marx.
MAGGIE BARTELLS.

ANTON J. ENGEL.
FRED'K WILLMANS.

STATE OF WISCONSIN, }
County of Milwaukee. }

28 Be it remembered that on this day came before me, the undersigned, a notary public within and for the county aforesaid, duly commissioned and acting as notary public, Annie Bartells and Maggie Bartells, to me well known as the grantors in the foregoing deed, and stated that they had executed the same for the consideration and purposes therein mentioned and set forth.

Witness my hand and seal as such notary public on this 27th day of September, 1881.

FRED'K WILMANNS,
Notary Public, Milwaukee Co., Wis.

Filed for record this 12th day of October, 1881, at nine o'lock a. m.
J. H. LAW, *Clerk.*

STATE OF ARKANSAS, }
County of Garland. }

I, Zeba Beldin, clerk of tte circuit court and *ex officio* recorder, do hereby certify that the foregoing is a true copy of a certain deed from Annie and Maggie Bartells to Otto Neubert as the same appears of record in my office on pages 610 and 611 of Book "G" of records of deeds and mortgages of Garland county, Ark.

Witness my hand and seal on this 14th day of July, 1884.

[SEAL.] ZEBA BELDIN, *Clerk.*

(Endorsed:) Filed March 2nd, 1885. Ralph L. Goodrich, clerk.

29 UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden

on Monday, the 12th day of April, anno Domini one thousand eight hundred and eighty-six, at the United States court-room, in the city of Little Rock, Arkansas, the Hon. David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On April 20th, 1886:

WM. H. GAINES and WIFE
vs. } 657.
ANNIE BARTELLS *et al.*

Come the complainants, by Benjamin and Davies, their solicitors, and come the defendants, by J. M. Harrell, their solicitor, and this cause is submitted to the court upon the pleadings and evidence, and by agreement of parties it is ordered that the complainants have fifteen days and the defendants thirty days thereafter in which to file abstracts, and thereafter the complainants to have ten days and the defendants ten days thereafter in which to file briefs, and that five days thereafter be given for reply. It is further ordered that each party serve upon the opposing party copies of abstract and briefs.

UNITED STATES OF AMERICA,
Eastern District of Arkansas.

Be it remembered that at a circuit court of the United States of America in and for the eastrrn district of Arkansas, begun and holden on Monday, the 25th day of October, anno Domini one thousand eight hundred and eighty-six, at the United States court-room, in the city of Little Rock, Arkansas, the Hon. David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On November 11th, 1886:

Come the complainants, by M. W. Benjamin, Esq., their solicitor, and come the defendants, by J. M. Harrell and G. W. Murphy, Esqs., their solicitors, and file herein their agreement as to depositions; which agreement as to depositions is as follows:

In the Circuit Court of the United States for the Eastern District of Arkansas.

WILLIAM H. GAINES and MARIA GAINES
vs. } 657.
OTTO NEUBERT.

It is agreed that depositions in the above-entitled causes or either of them may be taken before any notary public after 1st April, 1885, at the office of J. M. Harrell, in Hot Springs, Ark., and read as evidence in all or any of the said causes on the hearing, as far as rele-

vant and competent, although not taken in terms in all of them; that the petition filed and taken before the Hot Springs Commission by plaintiffs and the several defendants, or persons under whom they claim, for the land involved in these several cases, or the certified copies thereof, may, as far as applicable and relevant, be read on said hearing by any of the parties, and that the certified copies of deeds annexed to defendants' answers or any of them are true copies and may be read also on the hearing without further proof of execution and without producing the originals, and that proof as to the value of the improvements need not be taken until after the hearing, and that questions of the value of improvements shall, in the cases in which the plaintiffs recover, be after the
31 hearing referred to.

(Signed) G. W. MURPHY, *Att'y*,
J. M. HARRELL, *Att'y*,
For Defendants.

(Signed) M. W. BENJAMIN,
Att'y for Plaintiffs.

STATE OF ARKANSAS, }
County of Garland. }

I, W. A. Kirk, a notary public within and for the county of Garland and State of Arkansas, do certify that the above and foregoing is a true, complete, and perfect copy of the agreement to take depositions in the cases of Wm. H. and Maria Gainer, plaintiffs, and Otto Neubert *et al.*, defendants, pending in the circuit court of the United States for the eastern district of Arkansas and signed by G. W. Murphy and J. M. Harrell, for defendants, and M. W. Benjamin, for plaintiffs; which original agreement I have this day furnished to the clerk of the United States court for the eastern district of Arkansas, to be appended to the depositions taken under said agreement.

In testimony whereof I have hereunto set my hand and seal as such notary public this 4th day of January, 1886.

[SEAL.] W. A. KIRK,
Notary Public.

(Endorsed:) Filed November 11th, 1886. Ralph L. Goodrich, clerk.

And on March 2nd, 1887, as follows:

Come the complainants, by M. W. Benjamin, their solicitor, and on his motion it is ordered that this cause be dismissed as to
32 the defendants Annie and Maggie Bartells.

And on same day, as follows:

657. Now, on this day, this cause coming on for final hearing upon the complaint of plaintiffs, the answer of defendant Otto Neubert and replication to said answer, and the evidence, and, the court having heard the argument of counsel and being now sufficiently advised in the matter as to the proper decree to render herein, the

court finds that the board of commissioners mentioned in said complaint by error and mistake of law awarded the right to purchase lot seventeen (17), block sixty-eight (68), of the Hot Springs reservation, in the city of Hot Springs, county of Garland, State of Arkansas, to Annie and Maggie Bartells, heirs of Frank G. Bartells, who sold to defendant Otto Neubert, who had notice of plaintiffs' claim to said lot, and issued to them, Annie and Maggie Bartells, heirs of Frank G. Bartells, a certificate of award, and that in accordance with said erroneous ruling a patent issued improperly to said Annie and Maggie Bartells, heirs of Frank G. Bartells.

And the court is of opinion that said defendant, Otto Neubert, holds said patent and deed of said Annie and Maggie Bartells as trustee for the sole use of said William H. Gaines and Maria Gaines.

It is therefore considered, ordered, and decreed that all right, title, interest, and estate of the said defendant, Otto Neubert, in or to said lot or tract of land be, and the same is hereby, divested out of said defendant, Otto Neubert, and vested in said William H. and Maria Gaines, plaintiffs t-erein, and their heirs and assigns forever.

And that said defendant, Otto Neubert, do make, seal, and deliver a deed of quitclaim conveying said lot to said plaintiffs, William H. and Maria Gaines; and said defendant Neubert prays an appeal,

which is by the court granted; and it is further ordered that
33 this case be referred to N. W. Cox, special master of this court,

who is directed to ascertain and report to this court at its next term:

1st. The value of the rent of said lot since the award of said commissioners.

2nd. What amount of taxes has been paid on said lot by said defendant, Otto Neubert, since the award of said commissioners.

3rd. The value of the improvements made upon the said lot before and since the award of said commissioners.

And said special master may examine witnesses touching said matter and shall reduce the same to writing, and shall also use any testimony on file in said cause at the hearing, and report their testimony so taken to this court.

And it is further ordered that the plaintiffs do have and recover possession of said lot, and that they have and recover all the costs of suit herein, but no writ of possession to issue until the confirmation of master's report.

And it is further ordered that all questions of law touching the several matters herein referred to the marter be, and the same are, reserved until the coming in of his report, and this cause is reserved for further directions.

And the court finds from the evidence adduced that the lot in controversy is at this date of the value of six thousand dollars ($6,000).

And on April 9th, 1887, as follows:

657. Comes N. W. Cox, Esq., master herein, and files his
34 report; which report is as follows:

In the U. S. Circuit Court, Eastern District of Arkansas.

WILLIAM H. GAINES and WIFE, Pl'ffs,
vs.
ANNA BARTELLS and OTTO NEUBERT, Def'ts. } 657.

To the hon. U. S. circuit court for the eastern district of Arkansas

In accordance with the decree of this hon. court made in the above-entitled cause, as special master thereunder I have made examination of the matters and things therein directed.

After the examination of witnesses produced by the parties, whose testimony I file herewith, I find—

First. That the rental value of said lot 17, block 68, the lot in controversy, without improvements, *to be* $10 per front foot; that the frontage of said lot is 18 ft. by 75 ft. deep; the time from the date of the award to the first day of April term, 1887, of this court, at which time this report is made, *to be* 6 yrs. and 7 mos.-	$1,320 00	
Interest on same, at 6% (6 yrs. and 4 mos.)----------	250 80	
		$1,570 80
That the rental value of said lot, with improvements, for four years and six months, when new improvements were put up, *to be* $400 per annum-	1,800	
That the rental value for the two years and ten months prior would be worth at least the ground rent, which was $120 per annum, making----------	335 00	
There being no proof of said value.		
Second. That the amount of taxes paid by defendants, including sidewalk and sewer assessments, was------	257 30	
The discounts and interest balancing each other.		
35 Third. That the value of the improvements made upon said lot before the award was 400, but the same were taken away by defendant Neubert; that since the award----------	1,875 00	
That said defendants paid the U. S. Government for said lot ----------	80 00	
Interest on same from Jan. 1st, '82, @ 6% ----------	25 00	
		$105 60

Respectfully submitted,

N. W. COX,
Special Master.

Depositions of witnesses taken before N. W. Cox, master, appointed for that purpose by the U. S. circuit court for the eastern district of Arkansas, in the case of Wm. H. Gaines and wife, plaintiffs, against Annie Bartells and Otto Neubert, defendants, in the city of Hot Springs, Arkansas, on the 17th day of March, 1887, to be used in said cause.

Present: Plaintiffs, by R. G. Davies, Esq., and the defendants, by John M. Harrell, Esq., their attorney.

A. B. GAINES, being introduced upon the part of the plaintiffs and first duly sworn, deposes and sayr:

Question 1. State your name, age, and residence.

Ans. My name is A. B. Gaines; residence, Hot Springs; age, 29 years.

Question 2. Are you familiar with the rental value of property in the neighborhood of lot 17, in block 68, in the city of Hot Springs, since the award of the Hot Springs Commission?

Answer. I am. I have been renting property in that vicinity since 1877.

Question 3. What is a reasonable rental value of that lot during that time, with the improvements and without the improvements, said lot being 18 ft. in width and 75 ft. in depth?

36 Answer. With improvements, $65 per month; without improvements it is worth $15 per year per front foot.

ALBERT B. GAINES.

JOHN D. WARE, being introduced upon the part of the plaintiff and first duly sworn, says:

Ques. 1. State your name, age, residence, and occupation.

Answer. My name is John D. Ware; age, thirty-five years; residence, Hot Springs; occupation, real-estate and insurance agent.

Ques. 2. Are you familiar with the rental value of property on Central avenue since the award of the Hot Springs Commission?

Ans. I am, to some extent. I have had some rents to collect and it has otherwise come under my observation.

Ques. 3. Have you a general knowledge of what a lot situated as lot 17, in block 68, city of Hot Springs, 18 feet front by 75 feet in depth, with a house upon it 18 feet wide by 75 feet in depth, two stories, would rent for during said time—that is to say, the market value; and, if so, what would it be?

Ans. The rental value of lot 17, in block 68, is now worth $450 per year, with improvements.

Ques. 4. Can you state what would be a rental value per front foot for the ground on a lot 18 feet front by 75 feet, during that time, in that locality, as a ground rent, without any improvements upon it?

Ans. I think it would be worth ten per cent. upon whatever the land and improvements would bring. By taking off the improvements and calculating the ten per cent. upon the value of the land, would be its present value. I estimate that ground to be worth at present $200; per front foot, say, $15.

Ques. 6. Have you sold any property or had any offers to buy property in that immediate neighborhood; and, if so, at what price?

37 Ans. We sold lot 6, in block 77, for $6,000. We have had offers for lot 21, in said block, at $200 in cash per front foot, and we made that offer to the owner and he refused it.

JOHN D. WARE.

O. F. SMITH, being introduced on the part of the plaintiffs and first duly sworn, deposes and says:

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is O. F. Smith; age, 49 years; residence, Hot Springs, Arkansas; occupation, real-estate and load agent.

Ques. 2. How long have you been in the real-estate business in Hot Springs?

Ans. I went into it four years ago last June.

Ques. 3. Are you familiar with the rental values of property on Central avenue, in the city of Hot Springs, during that time, in the vicinity of lot 17, in block 68?

Ans. I took charge of some buildings in block 77, on the opposite side of the street, after I went into business—I think about three years ago.

Ques. 4. Have you a general knowledge of what a lot situated as lot 17, in block 68, with a house upon it 18 feet wide and 75 feet deep, would rent for during said time—that is to say, the marked value; and if so, what would it be?

Ans. My judgment is that such a building would rent at from $30 to $40 per month. I place it at $30 to be safe, for it might be vacant a part of the time; it might rent for more.

Ques. 5. Can you state what would be a reasonable rental value per front foot for the ground of said lot during said time, in that locality, as a ground rent, without improvements, per annum.

Ans. I should say about $10 per front foot.

O. F. SMITH.

38 N. M. SLOAN, being introduced upon the part of the plaintiffs and first duly sworn, deposes and says:

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is N. M. Sloan; age, 49 years; residence, Hot Springs; occupation, carpenter and builder.

Ques. 2. How long have you been in the business?

Ans. About twenty years; in Hot Springs for last nine years.

Ques. 3. Have you made an estimate on the value of the improvements upon lot 17, in block 68, in the city of Hot Springs? And, if so, state what it is and what said improvements would be worth to move off the lot.

Ans. Yes; I estimate the value when made at $1,300; now $900. To move the improvements off the lot they would be worth about the cost of moving. Mr. Bray and myself made the estimates together and we agreed in our estimates.

N. M. SLOAN.

GEORGE W. BRAY, being introduced upon the part of the plaintiffs and first duly sworn, says:

Ques. 1. State your name, age, residence, and occupation.

Ans. Geo. W. Bray; age, 36 years; residence, Hot Springs; occupation, carpenter and builder.

Ques. 2. How long have you been in the business?

Ans. About seventeen years; in Hot Springs the last six or seven years.

Ques. 3. Have you made an estimate on the value of the improvements upon lot 17, in block 68, in the city of Hot Springs? And, if so, state what it is and what said improvements would be worth to move off of the lot.

Ans. Yes; I estimate the value when made at $1,300; now $900. To move off they would be worth about the cost of moving.
39 Mr. Sloan and I made the estimates jointly and agreed perfectly in our estimates.

GEORGE W. BRAY.

Depositions taken in the case of Wm. H. Gaines and wife against Otto Neubert *et al.* before N. W. Cox, master, appointed by the U. S. circuit court for the eastern district of Arkansas, at the city of Hot Springs, March 23rd, 1879.

Present: Plaintiffs, by R. G. Davies, Esq., and the defendant Neubert in person.

OTTO NEUBERT, being first duly sworn, deposes and says:

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is Otto Neubert; of lawful age; residence, Hot Springs. I am the defendant in this case.

Ques. 2. Please state the value of the rent of said lot 17, block 68, in the city of Hot Springs, since the award of the commissioners, both with and without improvements.

Ans. With improvements, $12 per month; without improvements, about $4 per front foot per annum.

Ques. 3. What amount of taxes have you paid upon said lot since the award of the commissioners?

Ans. According to my receipts, including the sewer and sidewalk assessments, $257.30.

Ques. 4. State the value of the improvements made upon said lot before and since the award of the said commissioners.

Ans. Before the award, according to the testimony before the Hot Springs Commission, about $400.

On the 12th day of October, 1882, I purchased the lot from Annie and Maggie Bartells. On account of raising the grade of the street I was compelled to tear away the old house and I built a new one. That building cost me $1,300. I then, on account of another raise in the grade, had to raise my house and build a basement, which cost me $400. The raising cost $75. The sewer connections ordered by the city authorities cost $75. Pillers to the porch and surveying, $25; making a total of $1,875. I also paid the Government $80 as the purchase price *from* it. The width of my lot is 18 feet by 75 in depth. The depth of the lots in that block is 105 feet.

OTTO NEUBERT.

UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern District of Arkansas, begun and holden on Monday, the 11th day of April, anno Domini one thousand eight hundred and eighty-seven, at the United States court-room, in the city of Little Rock, Arkansas, the Hon. David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On May 9th, 1887:

657. Come- the defendants Otto Neubert, by S. W. Williams, Esq., his solicitor, and files herein his exceptions to report of master; which exceptions are as follows:

Exceptions not with papers.

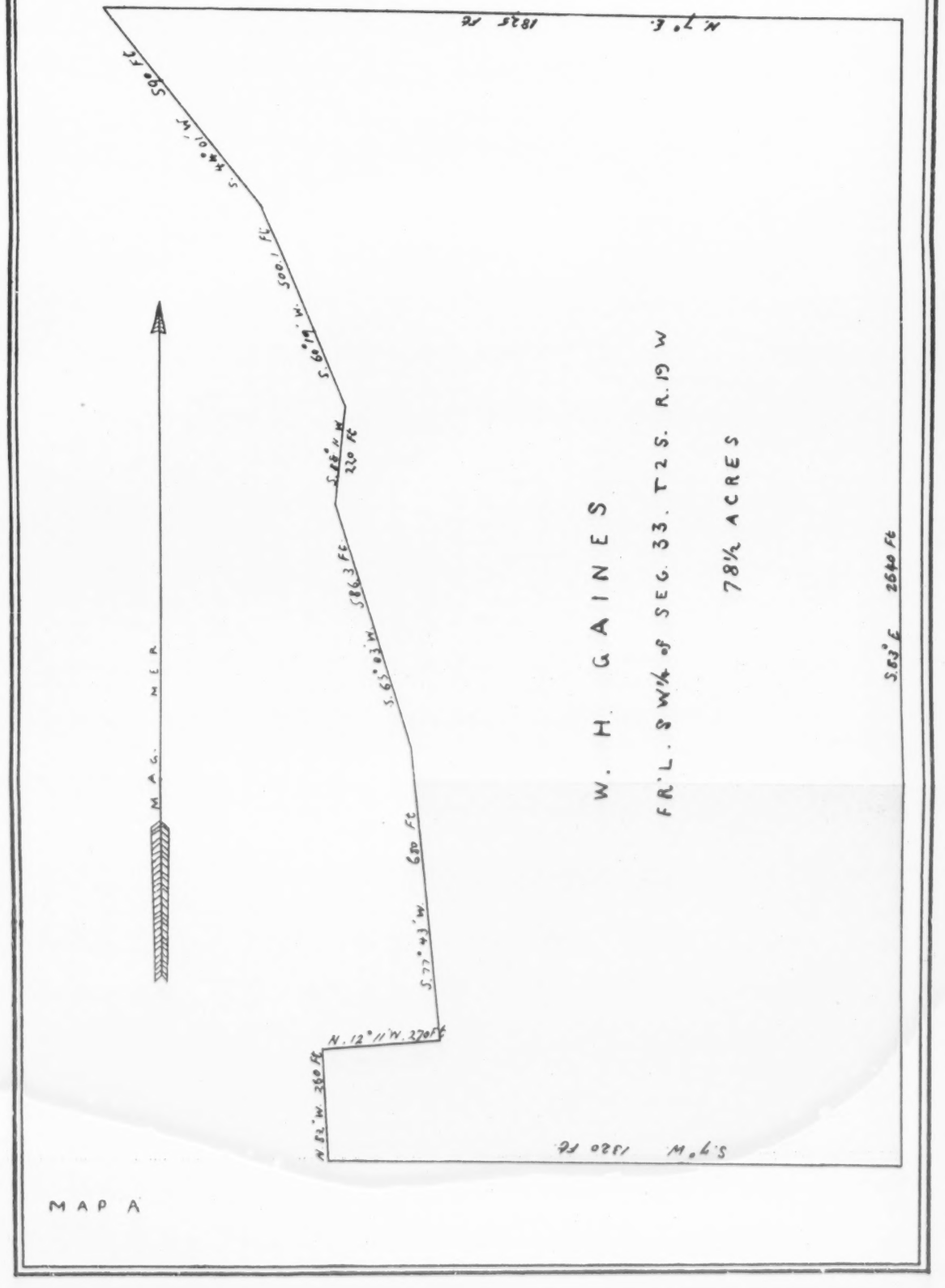
And on the final hearing the following evidence was introduced:

(Here follows three maps marked pp. 41, 42, & 43.)

No 312.
Neubert
v
Gaines et al
p. 41

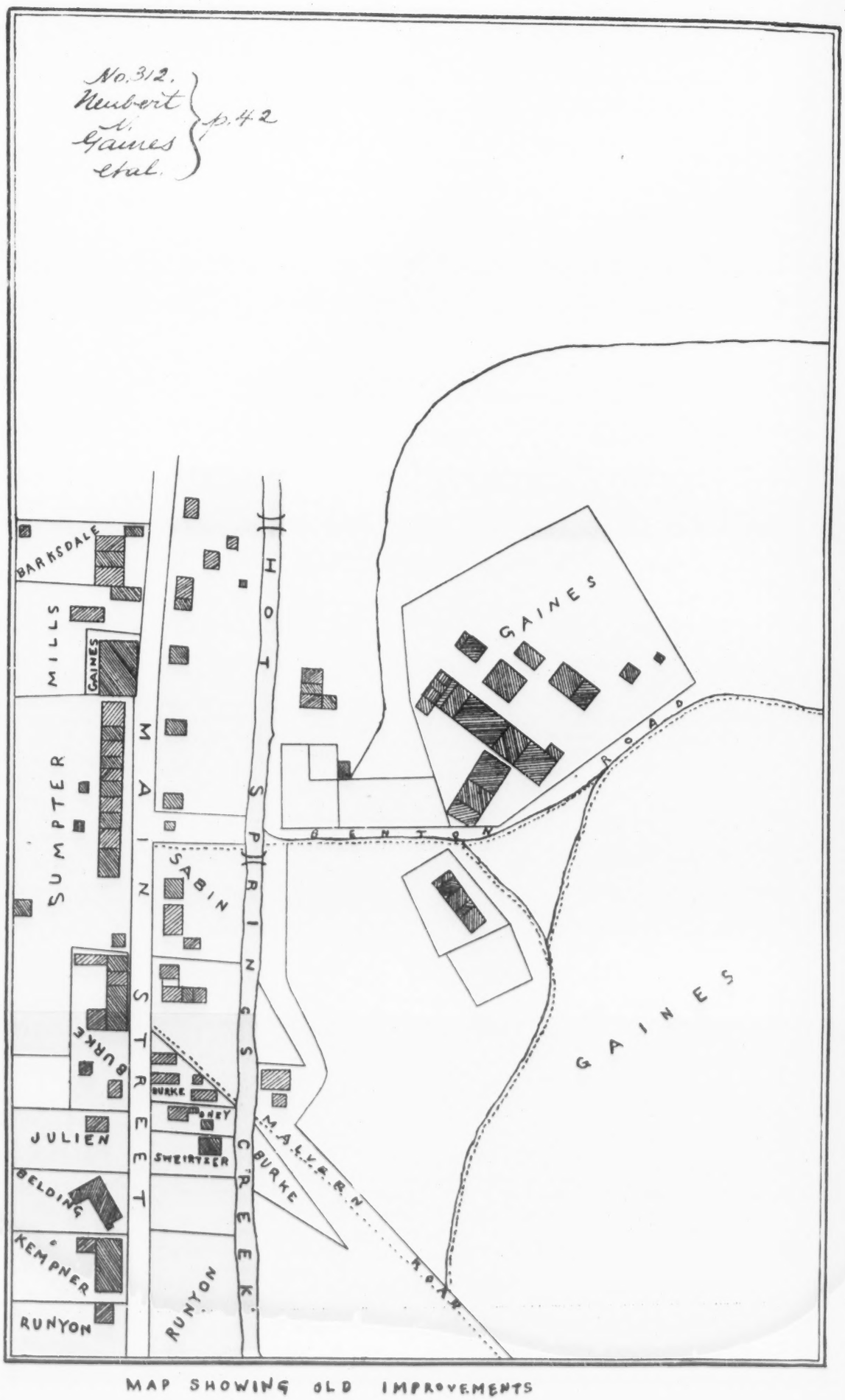
W. H. Gaines'

CLAIM


N. 7° E. 1825 ft
S. 25° E. 2640 ft
S. 7° W. 1320 ft
N. 82° W. 360 ft
N. 12° 11' W. 270 ft
S. 77° 48' W. 660 ft
S. 63° 03' W. 863 ft
S. 26° 47' W. 220 ft
S. 60° 19' W. 500.1 ft
S. 44° 10' W. 775 ft
M. A. G. MER.
W. H. GAINES
FR'L. S W¼ of SEC. 33. T 2 S. R. 19 W
78½ ACRES

MAP A

No. 312.
Neubert
v.
Gaines
et al.
} p. 42



MAP SHOWING OLD IMPROVEMENTS

S., all in R. 19 W., thence bearing S. 83° east one hundred and forty feet; thence N. 7° E. fifty (50) feet; thence N. 83° W. 150 feet; thence south 51 feet to place of beginning, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to Frank Horton the following lands: Commencing at a point N. 33° E. of sec. cor. post for secs. 32 and 33, T. 2 S., and sec's 4 and 5, T. 3 S., all in range 19 west and distant therefrom 305 ft., thence bearing south 84° E. 120 ft.; thence S. 6° E. 24 ft.; thence N. 84° E. 120 ft.; thence N. 6° E. 24 ft. to point of commencement, lying and being in the S. W. ¼ of S. W. ¼ of sec. 33, T. 2 S., R. 19 west, all the above bearings being read from the magnetic meridian.

47 Sold to Joseph Molen the following lands: Commencing at a point N. 35° 30′ W. of centr- subdivision stake on line bet. S. W. ¼ sec. 33, T. 2 S., and N. W. ¼ sec. 4, T. 3 S., R. 19 W., and distant therefrom 630 ft., thence bearing N. 29° 30′ W. 200 ft.; thence S. 60° W. 100 ft.; thence S. 29° 30′ E. 200 ft.; thence N. 60° E. 100 ft. to point of commencement, lying and being situate in the S. W. ¼ of S. W. ¼ of sec. 33, T. 2 S., R. 19 west, all the above bearings being read from the magnetic meridian. Sold to Thomas Secoy the following lands: Commencing at a point N. 87° 30′ W. of centre subdivision stake on line between S. W. ¼ of sec. 33, T. 2 S., and N. W. ¼ of sec. 4, T. 3 S., all in range 19 W. and distant therefrom 640 ft., thence bearing S. 37° 20′ E. 110 ft.; thence N. 81° 50′ E. 51 ft.; thence N. 37° 20′ W. 120 ft.; thence S. 60° W. 50 ft. to place of beginning, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to James Ritchie the following lands: Commencing at a point N. 35° E. of centre subdivision stake on line bet. S. W. ¼ of sec. 33, T. 2 S., and N. W. ¼ of sec. 4, T. 3 S., all in range 19 W. and distant therefrom 720 ft., thence bearing N. 60° E. 100 ft.; thence S. 29° E. 250 ft.; thence S. 43° W. 105 ft.; thence N. 29° W. 285 ft. to point of commencement, lying and being in S. E. ¼ of S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian.

48 Sold to C. S. Williamson the following lands: On the north by the old Benton road, with a line bearing N. 60° E. 150 ft; thence on the east by the claim of Julia S. Carhart and D. Carey, with a line bearing S. 29° 30′ E. 430 ft.; thence on the south by Gaines avenue, with a line bearing S. 60° W. 150 ft.; thence on the west by the claim of Wm. H. Gaines, with a line bearing N. 29° 30′ W. 430 ft. to place of beginning, lying and being in the S. E. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to I. W. Carhart the following lands: Commencing at a point N. 60° E. of centre subdivision stake on line between S. W. ¼ of sec. 33, T. 2 S., and N. W. ¼ of sec. 4, T. 3 S., R. 19 W., and distant therefrom 735 ft., thence bearing N. 29° 30′ W. 230 ft., thence N. 60° E. 190 ft., thence S. 69° 51′ E. 480 ft., thence S. 29° 30′ E. 95 ft., thence S. 61° W. 400 ft., thence N. 29° 30′ W. 200 ft., thence S. 60° W. 100 ft. to point of commencement, lying and being in the S. E. ¼ of the S. W. ¼ of sec. 33, T. 2 S.,

R. 19 W., all the above bearings being read from the magnetic meridian. Given to Sarah Flowers the following lands: Commencing at a point N. 23° 10′ east of sec. cor. post for secs. 32 and 33, T. 2 S., and secs. 4 and 5, T. 3 S., all in range 19 W., and distant therefrom 595 ft., thence bearing N. 82° 15′ E. 72 ft., thence S. 7° 45′ E. 22½ ft., thence S. 82° 15′ W. 72 ft., thence N. 7° 45′ W. 22½ ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 west, all the above bearings being read from the magnetic meridian. Given to Fannie Williamson the following lands: Commencing at a point N. 83° E. of sec. cor. post for secs. 32 and 33, T. 2 S., and secs. 4 and 5, T. 3 S., all in range 19 west and distant therefrom 740 ft., thence bearing N. 40° W. 300 ft., thence S. 55° W. 40 ft., thence N. 40° W. 40 ft., thence S. 55° W. 70 ft., thence S. 23° E. 280 ft., thence N. 75° E. 200 ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being taken from the magnetic meridian. Given to Mary P. Gaines the following lands: Commencing at a point N. 21° 5′ E. of sec. cor. post for sec's 32 and 33, T. 2 S., and sec's 4 and 5, T. 3 S., all in range 19 west and distant therefrom 537 ft., thence bearing N. 79° E. 72 ft., thence S. 11° E. 41½ ft., thence S. 79° W. 72 ft., thence N. 11° W. 41½ ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to Wm. H. Nelson the following lands: Commencing at a point N. 28° E. of sec. cor. post for secs. 32 and 33, T. 2 S., and secs. 4 and 5, T. 3 S., all in range 19 west and distant therefrom 680 feet, thence bearing N. 58° E. 200 ft., thence N. 35° W. 135 ft., thence S. 75° W. 120 ft., thence 86° W. 170 ft; thence S. 75° E. 45 ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Given to the Protestant Episcopal church the following lands: On the north by the claim of Wm. H. Gaines, with a line running N. 80° E. 65 ft.; on the east by the Gaines claim, with a line running S. 18° E. 70 ft.; on the south by the claim of S. W. Fordyce, with a line running N. 18° W. 108 ft.; thence N. 80 E. 50 ft.; thence S. 18° E. 20 ft. to the place of commencement, all the above bearings being read from the magnetic meridian.

Given to Kate McGrath the following lands: Commenceing at a point N. 9° 30′ E. of sec. cor. post for secs. 32 and 33, T. 2. S., and sec-. 4 and 5, T. 3 S., all in range 19 W. and distant therefrom 647 feet, thence bearing south 79° 30′ W. 102 ft., thence S. 10° 30′ E. 50 ft., thence N. 79° 30′ E. 102 ft., thence N. 10° 30′ W. 50 ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to George W. Baxter the following lands: Commencing at a point S. 12° 40′ E. of ¼-sec. post fret. sec'ts 32 and 33, T. 2 S., R. 19 W., and distant therefrom 1,492 ft., thence bearing south 85° 45′ W. 65 ft., thence S. 40° 15′ E. 12½ ft., thence N. 85° 45′ E. 65 ft., thence N. 40° 15′ W. 12½ ft. to point of com-

mencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the
51 magnetic meridian. Sold to B. W. Goode the following lands: Commencing at a point 13° 5′ E. of ¼-sec. post bet. secs. 32 and 33, T. 2 S., R. 19 W., and distant therefrom 1,420 ft., thence bearing S. 85° W. 100 ft., thence S. 50° E. 20 ft., thence N. 85° E. 100 ft., thence N. 50° W. 20 ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to G. L. Wilson the following lands: Commencing at a point S. 12° 20′ E. of ¼-sec. post between secs. 32 and 33, T. 2 S., R. 19 W., and distant therefrom 1,380 ft., thence bearing S. 89° 50′ W. 100 ft., thence S. 0° 10′ E. 35 ft., thence N. 89° 50′ E. 100 ft., thence N. 0° 10′ W. 35 feet to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Given to Albert Gaines the following lands: On the N. by the Hot Springs hotel property, the claim of W. H. Gaines, with a line bearing north 76° 30′ E. 50 ft.; thence on the east by Hot Springs creek, with a line bearing south 13° 30′ E. 63 ft.; thence on the south by the claim of Gordon, with a line bearing S. 75° W. 50 ft.; thence on the west by Valley St., with a line bearing N. 13° 30′ W. 62 ft. to point of beginning, including the office of A. K. Taylor, the entrance to Gaines' cottage, and the building occupied by Mr. Lemen, lying and being in the S. W. ¼ of the N. W. ¼ of sec. 33,
52 T. 2 S., R. 19 W.; also the following-described land: On the north by the claim of J. J. Sutton, with a line bearing N. 79° 30′ E. 185 ft.; thence on the east by Valley St., with a line bearing S. 10½° 20 ft.; thence on the south by the claims of Ellen McMurray, with a line bearing S. 79° 30′ W. 185 ft.; thence on the west by the section line bet. sect's 32 and 33, T. 2 S., R. 19 W., and the claim of J. J. Sumpter, with a line bearing N. 10° 30′ W. 20 ft. to place of beginning, lying and being in the S. W. ¼ of S. W. ¼ of sect'n 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Gave to Augustus L. Stitt the following lands: On the N. by the claim embracing the Garland house, with a line bearing N. 60° 45′ E. 80 ft.; thence *thence* on the east by the claim of the Peoria house and cemet-ry, with a line bearing S. 10° E. 140 ft.; thence on the S. by Malvern road, with a line bearing S. 60 W. 30 ft.; thence on the W. by the Malvern road, with a line bearing N. 32 W. 140 ft. to place of beginning; also the following: On the N. by the old Benton road, with a line bearing N. 60° E. 300 ft.; thence on the east by the claim of Jos. Molen, with a line bearing S. 26° E. 160 ft; thence on the south by the cemet-ry, with a line bearing S. 69° W. 180 ft. and N. 81° W. 110 ft. and S. 77½° W. 32 ft.; thence on the west by an alley fronting the Peoria house, with a line bearing
N. 14° W. 50 ft. to place of beginning, lying and being in
53 the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being taken from the magnetic meridian. Sold to James Mingovan the following lands: Commencing at a point S. 17° W. of centre subdivision stake on line bet. S. E. ¼ and

S. W. ¼ of sec. 33, T. 2 S., R. 19 W., and distant therefrom 500 ft., thence bearing north 24° W. 475 ft.; thence S. 770 ft., W. 300 ft.; thence S. 35° E. 420 ft.; thence S. 88° 45 E. 250 ft. to point of commencement, lying and being in the S. W. ¼ of S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian; all of which lands thus sold or given away they set up no claim to; that the following improvements are situate upon the premises claimed by your petitioners, namely, four hotels, fifty-three stores, saloons, and restaurants and two livery stables, one planing mill, one woolen factory and four dwelling-houses, and various stables, cribs, wells, fencing and other improvements usual about hotels, storehouses, livery stables, and dwelling-houses; that the same were erected by your petitioners and their agents and tenants under contracts made with your petitioners previous to April 24th, 1876; that they are of the value of one hundred and fifty thousand dollars.

Your petitioners further say that they claim to be the owners
54 of the said premises and entitled to again purchase the same from the United States upon the following grounds, to wit: That in 1839 Lydia Belding made application as the widow of Ludixocus Belding to the proper United States land office to purchase the whole of the southwest quarter of section (33) thirty-three, in township two (2) south and range (19) nineteen west of the fifth principal meridian, a copy of which application is hereto attached and made part hereof, marked Exhibit "C;" that said Lydia Belding some time after she had made said application transferred her right to her children, Maria Gaines, wife of Wm. H. Gaines, and Albert Belding, George Belding, and Henry Belding, a copy of which relinquishment and transfer is hereto attached and marked Exhibit "D," and after a full examination of said application to enter and purchase said quarter section of land, the Secretary of the Interior, on the 21st day of November, 1851, instructed the commissioner of public lands to permit the heirs and legal representatives of Ludovicus Belding to enter and purchase said lands; that in pursuance of said order from the then Secretary of the Interior the commissioner of public lands instructed the register and receiver of the United States land office at Washington, in the State of Arkansas, to permit the heirs and
55 legal representatives of said Ludovicus Belding to enter and purchase said quarter section of land, and, in pursuance of said instruction, Maria Belding, wife of Wm. H. Gaines, Albert Belding, Henry Belding, and George Belding, heirs and legal representatives of Ludovicus Belding, on the 19th day of December, 1851, made application in the name of said heirs and legal representatives of said Ludovicus Belding to the said register and receiver at said land office at Washington, Arkansas, which land office was the proper land office for entering said land, a copy of which application is hereto attached and marked Exhibit "E," and prayed to be taken as a part hereof, and upon said application the said register and receiver permitted said Maria Gaines, wife of Wm. H. Gaines, Albert Belding, Henry Belding, and George Belding to enter and purchase the southwest quarter of section (33) thirty-

three, in township two (2) south, range (19) nineteen west, and said heirs and legal representatives did then and there enter and purchase said quarter section from the United States, and did then and there pay the United States the sum of two hundred dollars for said quarter section, that being the maximum price charged by the United States for her public lands. Said two hundred dollars were paid and advanced by Wm. H. Gaines, the husband of said Maria Gaines, late Maria Belding, and upon the payment of said
56 sum of money said heirs and legal representatives did, on the 19th day of December, 1851, receive from B. F. Hempstead, the duly authorized receiver of the United States land office at Washington, Arkansas, a patent certificate for said land, a copy of which is hereto attached, marked Exhibit "F," prayed to be taken as part hereof. The original is in the possession of your petitioners and subject to the order an- inspection of the honorable board of commissioners.

Your petitioners respectfully show and aver that by virtue of said entry and purchase and patent certificate therefor they were by the laws of the State of Arkansas and the laws of the United States legally entitled to have the possession and control of the whole of said quarter section of land thus entered and paid for, subject only to the rights of the United States Government; that notwithstanding the legal title still remained in the United States after said entry and purchase and the issuance of said patent certificate, still they by reason of said entry and purchase and the patent certificate issued therefor acquired an equitable estate in and to said quarter section, an estate that by the laws of the State of Arkansas and of the United States *were* hereditable, devisable, and assignable, so your petitioners aver that from the 19th day of December, 1851, to and including the 24th day of April, 1876, they not only had a legal right
57 in and to the possession of the premises herein claimed, but they had a legal right recognized by the laws of the State of Arkansas and by the United States to devise, sell, or lease the whole or any portion of said premises; that your petitioners' possession, more particularly hereafter set forth, was not the possession of a trespasser or a squatter on the public lands, but was a peaceable, lawful, and rightful possession under the laws both of the State of Arkansas and of the United States, and that the sales and leases are not the sales and leases of a trespasser or squarter upon the public lands, but were the sales and leases of parties legally in possession, and your petitioners are advised and aver the fact to be that all sales and all leases made by parties rightfully and legally in possession have always been recognized, countenanced, and held to be valid by both the courts of the State of Arkansas and of the United States as between the vendor and vendee and lessor and lessee and their privies.

Your petitioners show unto your honors that when they paid for and received said patent certificate they were not in possession of any portion of said quarter section of land, and that your petitioners recovered possession *to* a large and the most valuable portion of the premises now claimed by your petitioners through the courts

of the State and the Supreme Court of the United States
58 an account of the legal right to the possession and control of the lands and premises which your petitioners now claim.

Your petitioners respectfully show that at the time of said entry the northeast quarter of said quarter section was unoccupied, and the same is now included in the Hot Springs Mountain reservation, except about three acres in the southeast corner of said northeast quarter, which three acres, more or less, had been in the lawful possession of your petitioners for more than twenty years previous to April 24, 1876; the same was previous to that time fenced and improved by your petitioners. Your petitioners make no claim to any of said northeast quarter of the said southwest quarter, except said three acres, more or less, on the south of said new reservation. The northwest quarter of said southwest quarter, when entered as aforesaid, was, with the exception of some of the hot springs that are now included in the Hot Springs Mountain reservation, in the possession of John C. Hale and Henry M. Rector and other parties. Your petitioners recovered judgment against John C. Hale for the possession of so much of said northwest quarter of said southwest quarter as was occupied by him, and said judgment was affirmed by both the supreme court of the State of Arkansas and
59 of the United States, and also recovered judgment for possession against Henry M. Rector and others for the portion of said northwest quarter of said southwest quarter occupied by them; which judgments were affirmed by the supreme court of the State of Arkansas and of the United States, and, after said judgments were recovered and affirmed as aforesaid, said Hale and said Rector filed a bill in equity setting up an equitable title to said land and enjoining the execution of the judgment at law; which last suit was still pending in the United States Supreme Court on the 24th day of April, 1876, so that your petitioners never in fact had actual possession of said northwest quarter of said southwest quarter, and they do not now set up any claim to the same. The southeast quarter of said southwest quarter at the time of said entry was unoccupied, with the exception of about ten acres thereof in the southwest corner of said southeast quarter, which was cleared and fenced and in cultivation and occupied by Abigal Sabin, who soon afterwards married a Mr. Du Pas. Your petitioners, being willing to pay said Abigal Sabin as well as all others for the improvements that they had made, bought out said Abigal Sabin's claim, and she delivered the possession to your petitioners, and your
60 petitioners have remained in possession and control of said field ever since, and were in possession of the same on the 24th day of April, 1876. Your petitioners, after purchasing and paying for said improvements, afterwards took actual possession of the remainder of said southeast quarter of the southwest quarter and cleared off and fenced and improved the same, and was in continued possession of the same for more than twenty years previous to the 24th day of April, 1876, with exception of a small portion sold off to other parties which is hereinbefore set forth, and with the further exception of a few lawless trespassers whose tres-

passes will be hereafter set forth. Nearly all of the southwest quarter of the southwest quarter at the time of said entry was in the possession of Abigal Sabin, Lawson Runyon, Abraham Kempner, Mrs. Belding, Mrs. Julian, Patrick Burke, James Sumpter, Richard Puckett, Edward Mills, Jacob Sweiptzer, Samuel and Oney Macklin, Harrison D. Flowers, and E. G. Malone.

Abigal Sabin had at that time about ten or fifteen acres in the southeast corner of said southwest quarter cleared, fenced, and in cultivation, which, together with land adjoining that in the southwest corner of the southeast quarter of said southwest quarter, made a field from twenty to twenty-five acres, and said
61 Abigal had in addition thereto a small field between said field and Hot Springs mountain of about two acres, and had a lot of houses and stables about where the present residence of your petitioners is, all of which your petitioner, Wm. H. Gaines, bought of said Abigal Sabin and for which he paid the sum of seven hundred dollars, as will more fully appear by reference to a copy of Abigal Sabin's or Du Pas' agreement and receipt therefor, which is hereto attached and marked Exhibit "G," prayed to be taken as a part hereof; the original bill will be produced in evidence to the court. Your petitioner, Wm. H. Gaines, also paid E. G. Malone for his improvements, a house upon the west side of Main or Valley street, where the St. Louis saloon now stands. Lawson Runyon, Mrs. Belding, and Mrs. Julian surrendered their claims without any suit. Abigal Sabin had other claims that she refused to sell or surrender. Your petitioners, always desiring to deal fairly with all men, offered to pay all of said occupants for their improvements, but they refused to sell to your petitioners or to surrender to them, and on the 5th day of January, 1852, your petitioners brought suits in ejectment against Richard Puckett, Harrison D. Flowers, Samuel and Oney Macklin, Abigal Sabin, Patrick Burke, and James Sumpter, and in 1853 and 1854 the further suits in ejectment
62 against Jacob Sweiptzer, Abraham Kempner, Edward Mills, and Jacob W. Parker; said suits included all the property on both sides of Valley street from the now Guinn house property to the Earl house property and a mill on the east side of Hot Springs creek, just south of the Malvern crossing. This property was at that early day all enclosed, occupied, and improved; it had upon it mills, dwelling-houses, stores, hotels, livery stables, blacksmith and wagon shops, and various other buildings. Your petitioners, being legally entitled to the possession of said property by virtue of said patent certificate, recovered judgment for possession of all of said property in the years 1856 and 1858. On the 3rd of March, 1856, the clerk of Hot Springs county issued writs of possession upon said judgments, and on the 6th day of March, 1856, the sheriff put your petitioner, Wm. H. Gaines, into the possession of the mill-house and other improvements and lands occupied by J. W. Parker, on and east of Hot Springs creek, a copy of which writ is hereto attached, marked "H," and prayed to be taken as part hereof, and just north of the now Malvern crossing, and on the same day said sheriff put your petitioner, Wm. H. Gaines, into the possession of a dwelling-

house and outhouses occupied by Richard Puckett, which house and grounds were where the Hot Springs hotel now stands, a
63 copy of which writ is hereto attached and marked "I" and prayed to be made a part hereof; and on the same day said sheriff put your petitioner in possession of all the houses, buildings, improvements, and inclosures occupied by Harrison D. Flowers, which property included what is now occupied by G. L. Wilson and Central house, a copy of which writ is hereto attached, marked "J," and prayed to be taken as a part hereof; and on the same day said sheriff put your petitioner, Wm. H. Gaines, into the possession of the dwelling-house and outhouses and inclosures occupied by Samuel and Oney Macklin, on the east side of Valley street, which property included the property now leased by Louis Bertsch and Wm. Staats, a copy of which writ is hereto attached, marked "K," and prayed to be taken as a part hereof; and on the same day said sheriff put your petitioner into the possession of all the property occupied by Abigal Sabin's blacksmith shop and wood shop and other buildings, on the east side of Valley creek, which property included the property since leased to D. P. Beldin, J. W. Kimball, R. H. Colvin, and J. L. B. Caver by Wm. H. Gaines, and held and occupied by partee under said leases until and including April 24th, 1876, a copy of which writ is hereto attached, marked Exhibit "L," and prayed to be taken as a part hereof; and on the same day said sheriff put your petitioner, Wm. H. Gaines, in possession
64 of all the enclosures, storehouses, and dwellings occupied by Patrick Burke on both sides of Valley street, which property includes the property since leased to Bell and McCarthy, Herman Moscowitz, Philip A. Helfrick, J. W. Brantley, John Kubler, Green Payne, and H. C. Anderson by Wm. H. Gaines, and held and occupied by and under said lease until and including April 24th, 1876, a copy of which writ is hereto attached, marked Exhibit "M," and prayed to be taken as a part hereof; and on the same day said sheriff put your petitioner, Wm. H. Gaines, into possession of the inclosures, hotels, stores, and dwellings occupied by James Sumpter, on the west side of Valley street, which property includes the property leased to J. T. Chidester and Dr. O. A. Hobson and the open ground below Dr. O. A. Hobson's building and the ground occupied by Little and Jenkins on the west side of Valley street, and at the same time your petitioner had a judgment against said James Sumpter for one thousand dollars damages, and in consideration of your petitioner instructing the sheriff to return the execution satisfied the said Sumpter surrendered his lots and improvements he had possession of on the east side of Valley street to your petitioner and took a lease for the same, a copy of which writ is hereto attached, marked
65 "N." Said Chidester and Hobson held and occupied under said leases until and including April 24th, 1876, and on the — day of —— the sheriff of Hot Springs county put your petitioner, Wm. H. Gaines, into the possession of the lands, houses, and buildings occupied by Jacob Sweiptzer on the east side of Valley street, which property has since been leased by Fife and Houston and assigned to R. E. Allen and by Yonley & Bro., and was occupied on

said leases from the said — day of —— until and including the 24th day of April, 1876, a copy of which writ is hereto attached, marked "O," and prayed to be taken as a part hereof; so your petitioner- avers that on the — day of —— they not only had the legal but actual possession of the southwest quarter of the southwest quarter of said section thirty-three; that the same was fenced and improved at that date; that it had on it improvements worth the sum of five thousand dollars; that your petitioners kept possession and control of the same from that date until and including the 24th day of April, 1876; that they kept the improvements in repair, and in 1859 and 1860 caused to be built a theatre upon lands near Valley street just south of where the bridge now crosses the Hot Springs creek; also built other houses below the theatre, where the Cohn house now stands. Your petitioners aver that they have resided
60 on the premises claimed ever since 1852, a period of over twenty-five years. Your petitioners file herewith a map showing the improvements on the premises claimed in 1860, marked Exhibit "S." Your petitioners also aver that, being in the lawful, legal, and actual possession of said premises claimed in the year 1856, your petitioner, Wm. H. Gaines, on the 6th day of March, 1856, leased all the houses and outhouses, bath-houses, stables, gardens, lots, etc., to James Sumpter that had been occupied by James Sumpter before Wm. H. Gaines recovered the judgment and was put into possession by writ of possession heretofore referred to and compromise heretofore referred to, except one storehouse and two rooms then occupied by A. Kempner; said lands, houses, outhouses, and bath-house, stable, and garden are more particularly described in the lease, a copy of which is hereto attached, marked Exhibit "R," the original having been lost or mislaid, and which are also shown by map, showing old improvements, both of which are asked to be taken as a part hereof; and your petition-rs also, on the same day and year, rented one store-room and two rooms to A. Kempner, a copy of which lease is hereto attached, marked Exhibit "P," and prayed to be taken as a part hereof; said store and two rooms leased to Kempner occupied the ground now leased to J. T. Chi-
67 dester; and on the 8th day of December, 1857, your petitioners made the further lease of a part of the premises and improvements herein claimed to J. W. Parker, a copy of which lease is here*by* attached and prayed to be taken as a part hereof, marked Exhibit "Q," which lease included stables and buildings in the then forks of the road where the buildings commonly known as the Nichols, Vaughn, and Ducker building now stand; also a mill on the east side of the creek and north of the now Malvern crossing. All of said tenants occupied said premises under said lease until after the late civil war commenced, and said Sumpter renewed his lease until Hale was dispossessed by Gaines *et al.* Your petitioners aver that soon after J. W. Parker gave up possession of the premises between the then forks of the road they leased the same to John Sammons, who used a portion thereof for a blacksmith shop during the war, and it was reported to Maj. Gen'l Steele that John Sammons was in the habit of shoeing horses belonging to

guerillas, bushwhackers, &c., and a company of Federal soldiers were sent from Little Rock to Hot Springs to burn said shops and houses, and said shops and houses were burned in accordance with said instruction; and your petitioners are informed that afterwards various parties reported to Maj. Gen'l Steele, the Federal gen-
eral commanding at Little Rock, that Mrs. Sumpter, the
68 widow of James Sumpter, was harboring, protecting, and
feeding guerillas and bushwhackers in the houses that her husband, James Sumpter, had rented from your petitioner, Wm. H. Gaines, and Maj. Gen'l Steele sent another company from Little Rock to Hot Springs to burn said buildings, and said company did, in accordance with their orders, burn said buildings, together with the buildings that had been rented to A. Kempner, and which he had previously vacated; and they also burned at the same time the storehouse purchased of Malone. All of these buildings burned were the property of your petitioners. Your petitioners also aver that during the war the theatre building was destroyed and torn down by marauders.

Your petitione-s aver that during the late civil war there were very few persons that visited the springs for their health, and the buildings owned by your petitioners for the use and accommodation of visitors became old and dilapidated, and when the war closed your petitioners began to repair their buildings for the purpose of renting the same to the public, and in 1870, in order to accommodate the public and for the purpose of improving and making valuable their property that they had thus acquired, and that the Su-
preme Court of the United States had decided that they were
69 entitled to have possession of and which your petitioners
honestly believed they were entitled to and would soon receive a patent for, they built, at an expense of twenty-four thousand dollars, the Hot Springs hotel, the first large, commodious, first-class hotel ever built in Hot Springs. They also built and purchased before the 24th day of April, 1876, several other buildings, used as offices, storehouses, restaurants, saloons, and dwelling-houses. Your petitioner- also refenced the premises herein claimed and cleared off a large portion of the ground claimed and put it into cultivation. Your petitioners also made large improvements to the houses in which they live. Your petitioners aver that the improvements that they have made independent of the improvements made by tenants of your petitioners, and which improvements made by tenants are by law also the improvements of your petitioners, as will be fully set forth hereinafter, cost at least the sum of sixty thousand dollars; and your petitioners show and aver that they have spent in defending the right conferred upon them to the premises claimed by the United States in issuing said patent certificate the sum of at least thirty thousand dollars in costs
and lawyers' fees, and that they have paid about six
70 thousand dollars taxes to the State and county upon said
premises; that your petitioners having purchased said premises from the United States Government, and honestly believing that they had a title to the same, and knowing that if said prem-

ises were sold for taxes their adversaries would buy it in and try to evict them upon such tax title, they always paid the taxes assessed against them on said premises promptly, and your petitioners aver that they had such confidence that they would get a patent to the whole of said quarter section of land, and had such a desire to have no cloud upon their title that they paid $416 00 taxes only — days before the Supreme Court of the United States declared that no one was entitled to a patent for said quarter section. Your petitioners aver that they have paid out for improvements, taxes, costs, lawyers' fees, and travelling expenses in attending court more than one hundred thousand dollars. Your petitioners have leased at various times a large portion of the property herein claimed, all which your petitioners herein set forth. Your petitioners aver that they
71 are the claimants and rightful occupants of said lands claimed; that they have caused all the improvements to be made that have been made thereon; that no one else have made any improvements thereon in their own right, but all buildings erected and improvements made by other parties than your petitioners upon said claim, other than those recovered in law by your petitioners, were made as the agents and tenants of your petitioners, under an express contract, and said buildings and improvements thus erected are now, in fact, in law, the buildings and improvements of your petitioners, and were the buildings and improvements of your petitioners on the 26th day of April, 1876, and were not the buildings of any one else, and all parties pretending to claim the same are estopped, both in law and equity, from setting up that they made the same in their own right, and are estopped, both in law and equity, from setting up that they occupied the respective premises claimed in any other manner than as agents and tenants of your petitioners; and your petitioners again aver that they are not only both the rightful claimants and rightful occupants, but that they are the only parties since 1852 that ever occupied the same in their own right; and they aver
72 that George Belding, Albert Belding, and Henry Belding having leased, assigned, transferred, and set over to your petitioners all their rights in and to said premises. Your petitioners again aver that they had, under a patent certificate from the United States, legally, peaceably, and uninterruptedly occupied said premises for more than twenty years previous to and including April 24th, 1876, and that they were the only parties that were upon the 24th day of April, 1876, occupying said premises in their own right. So your petitioners aver that, having once entered and paid the United States for the land claimed, which money the United States still retains, and having owned and made the first improvements on said premises, and having occupied in their own right and improved and caused to be improved in their own right said premises continuously and peaceably for more than twenty years previous to and including April 24th, 1876, and having paid taxes upon said lands for more than twenty years, and the Supreme Court of the United States having repeatedly decided that your petitioners were legally and rightfully entitled to the possession of

said lands and improvements, one of which decisions of the Supreme Court of the United States, declaring that your petitioners
73 are entitled to the premises in their possession and to the improvements made and caused to be made as against everybody except the United States, has been rendered since the decision of April 24th, 1876, and which decision the Supreme Court of the United States say is in harmony with the decision of April 24th, 1876, that they are by the laws of the land in equity and good conscience alone entitled to again purchase said premises from the United States. Wherefore they pray that the commissioners shall adjudge to them the right to purchase the said premises from the United States and for other proper relief.

WM. H. GAINES.
MARIA GAINES.

GENERAL LAND OFFICE, *November 25th*, 1851.

GENTLEMEN: The papers accompanying your letters of the 18th and 24th March last in reference to the claims of the Hot Springs, in Arkansas, having been submitted to the Secretary of the Interior for his action on the legal point in the case, to wit, the reservation of the land by Congress, they were returned to this office for its decision on the respective merits of the pre-emption claims, irrespective of this question.

74 On the 26th day of August last this office returned the papers with its decision adverse to the claims of the heirs of John Percifull and in favor of that of the heirs of Ludovicus Belding, it agreeing with you both as to the establishment of the facts of cultivation in 1829 and possession on May 29th, 1830, and regarding the objections of the receiver, founded upon the opinion that those acts were performed as the tenant of another as not affecting the validity of the claim. On the 14th ult. this office received the opinion and decision of the Secretary of the Interior, dated the 10th of that month, in which he sustains the existing validity of the act of the 20th April, 1832, it not having been repealed or affected by any subsequent law, and that therefore none of the claims preferred for this land are of any legality. On the said 14th ult. an application was made by the attorney of the heirs of Belding for permission to make an entry of said claim in order that they may be placed in a proper position for the assertion of their rights hereafter in the courts, stating that of course under the decision of the Secretary they should not ask for a patent.

This was refused by this office, and an appeal from that
75 action taken to the Secretary of the Interior, who on the 21st inst. addressed this office a letter, a copy of which is herewith enclosed. In accordance with the directions of the Secretary therein contained you are instructed to permit the "heirs of Ludovicus Belding" to make payment for the S. W. qr. sec. 33, T. 2 S., R. 19 W., as containing 160 acres, and, in addition to the ordinary entry thereof upon your books and the return to this office, you will note the fact of its interference with the New Madrid location of Langlois, of its embracing land directed to be reserved by act of 20th of

April, 1832, and that said entry is permitted under the Secretary's decision of the 21st November, 1851. Similar annotations will be made on the receiver's receipt and the register's certificate.

Respectfully, your obedient servant,

J. BUTTERFIELD,
Commissioner.

Register and receiver, Washington, Arkansas.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *November 21st*, 1851.

SIR: Upon consultation with the Attorney General, and after full consideration of the application of A. H. Lawrence, Esq., attorney for the heirs of Ludovicus Belding, one of the claimants to
76 the Hot Springs of Arkansas, on appeal from your decision of the 15th ultimo, against permitting said heirs to make entry under the acts of 29th May, 1830, and 14th July, 1832, I have concluded that it will be proper and in accordance with precedent to permit them to do so, and you will therefore instruct the register and receiver accordingly. Said entry will remain subject to the same power of revision and control by the General Land Office and this department as may be lawfully exercised over any ordinary entry. The Government will still hold the ultimate power of protecting its own rights, while the claimants will merely be placed in a position to contest the adverse claims of others to the same land.

I am, sir, respectfully your obedient servant,

ALEXANDER H. H. STUART, *Secretary.*

The Commissioner of the General Land Office.

No. 6545.

LAND OFFICE, WASHINGTON, ARKANSAS,
December 19th, 1851.

We, Maria Gaines, wife of William H. Gaines, late Maria Belding; Albert Belding, Henry Belding, and George Belding, heirs and legal representatives of Ludovicus Belding, deceased, of Hot Springs county, Arkansas, do hereby apply to purchase the southwest
77 quarter of section thirty-three (33), in township two (2) south, of range nineteen (19) west, as containing one hundred and sixty acres, for which we have agreed with the register, acting under instructions from the Commissioner of the General Land Office bearing date 25th November, 1851, to give at the rate of one dollar and twenty-five cents per acre.

A. BELDING.
MARIA GAINES.
HENRY BELDING.
GEORGE BELDING.

I, William H. Etier, register of the land office at Washington, Arkansas, do hereby certify that the tract above mentioned is sold

as containing one hundred and sixty acres, as mentioned above, and that the price agreed upon is one dollar and twenty-five cents per acre.

WM. H. ETTER, *Register.*

NOTE.—In accordance with instructions, I note the interference of this entry with the New Madrid location of Langlois, of it embracing land directed to be reserved by act of April 20th, 1832, and that the entry is permitted to be made under the decision of the Secretary of the Interior of November 21, 1851, transmitted to this office by Commissioner of General Land Office under date of 25th November, 1851.

W. H. ETTER, *Register.*

REGISTER'S OFFICE, WASHINGTON, ARKANSAS,
January 19th, 1852.

78 I, William H. Etter, register of the land office at Washington, Arkansas, do hereby certify that the foregoing pages contain a true copy of the letters received from the Commissioner of the General Land Office, the application filed, and the annotation on the tract book in this office made under said instructions.

WM. H. ETTER, *Register.*

No. 6545.

RECEIVER'S OFFICE AT WASHINGTON, ARKANSAS,
December 19th, 1851.

Received from Maria Gaines, wife of William H. Gaines, formerly Maria Belding; Albert Belding, Henry Belding, and George Belding, the heirs and legal representatives of Ludovicous Belding, deceased, of Hot Springs county, in the State of Arkansas, the sum of two hundred dollars in full for the southwest quarter of section thirty-three (33), in township two (2) south, of range nineteen west, containing one hundred and sixty acres (160), according to the return of the surveyor general, at $1.25 per acre. According to instructions I note that this entry interferes with the New Madrid location of Francis Langlois on the same lands, and also it embraces lands directed to be reserved by the act of Congress of the 20th April, 1832, and is only permitted to be made under the de-
79 cision of the Secretary of the Interior, under date of November 21st, 1851, and the instructions of the Commissioner of the General Land Office, under date of November 25th, 1851, in accordance with said decision.

$200. B. F. HEMPSTEAD, *Receiver.*

Receiver's Receipt, December 19th, 1851, for $200, Entrance Money for Hot Springs Quarter Section (S. W. — 33, T. 2 S., R. 19 W.), "G."

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *December 23rd*, 1873.

I, W. W. Curtis, acting Commissioner of the General Land Office

do hereby certify that the annexed copy of the tract book showing the Washington, Arkansas, cash entry No. 6545, of Maria Gaines *et al.*, is a true and literal exemplification from the records of this office showing that said entry has not been cancelled.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above mentioned.

W. W. CURTIS,
Acting Commissioner of General Land Office.

(Part of section), S. W. ¼; (section), 33; (township), 2 S.; (range), 19 W.; (acres), 160; (rate per acre, dollars, cents), 81.25; (purchase-money), $200.00; (name of purchasers), Maria Gaines, late Maria Belding; Albert Belding, Henry Belding, and George
80 Belding, heirs of L. Belding; (date of sale), 1851—December 19; (number of receipt and certificate of purchase), 6545.

Abstracts of Land Sold in the Land Office to —— from the — Day of —— to the — Day of the Same Month, Inclusive.

(When sold), 19th December, 1851; (number of receipt and certificate), 6545; (by whom purchased, name), A. Belding, Maria Gaines, H. Belding, and George Belding, Hot Springs, per act of 20th April, 1832; (tract purchased) (section *or* part of section), (S. W. quarter, whole of); (number of section), 33; (number of township), 2 S.; (number of range), 19 W.; (quantity acres), 160; (price per acre) (dollars, cents), 81.25; (purchase-money) (dollars), 8200; (section 33), township 28, range 19 W.; reserved by the order of the President May 16th, 1839, for —— ——.

UNITED STATES LAND OFFICE,
CAMDEN, ARKANSAS.

I hereby certify that the above and foregoing is a true and full copy of the tract book in relation to section thirty-three, township two south, of range nineteen west, as the same remains in this office.

Given under my hand this second day of January, 1874; and I am unable to find in this office any instruction to this office from the Secretary of the Interior or from the Commissioner of
81 the General Land Office, at Washington, D. C., to cancel the above entry of Belding and Gaines; therefore said entry is not cancelled, upon the records in this office, the 13th day of January, 1874.

N. N. RAWLINGS, *Register.*

STATE OF ARKANSAS, } *To wit:*
County of Hot Springs, }

The State of Arkansas to the sheriff of Hot Springs county, Greeting:

Whereas on the second day of March, A. D. one thousand eight hundred and fifty-four, at our circuit court of Hot Springs county, by the consideration and judgment of said court, Wm. H. Gaines

and Maria Gaines, his wife; Albert Belding, Henry Belding, and George Belding recovered against Patrick Burke the sum of one hundred dollars, as well as the possession of certain lands and tenements situated in said county, namely, all that part of a certain tract or parcel of land known and described on the plat of the public survey as the southwest quarter of section thirty-three, in township two south of range ninetween west, described as follows, to wit: All that portion of said quarter section enclosed by the fence or enclosure now surrounding on three sides a certain tenement known as Burk's storehouse, including the land on which said storehouse is situated, the said store-
82 house being — what is known as Hot Springs valley, fronting on the west side of the stage road leading from the Hot Springs to Little Rock, and also a certain tenement now occupied by one Jacob W. Parker, including all the land enclosed by the fence now surrounding the same, and all the enclosures adjoining and connected with the same, the said last-mentioned tenement and enclosures being below and south of the point where the stage road crosses the Hot Springs creek west of said stage road and between that road and the road leading south from Hot Springs to the Washita, which was adjudged to them for their damages sustained in that behalf expended, and which costs are taxed and amount to the sum of twenty-two dollars and eighteen cents: You are therefore commanded that you forthwith deliver to the said Wm. H. Gaines and Maria Gaines, Albert Belding, Henry Belding, and George Belding possession of the premises above described; and you are further commanded that of the goods and chattels, lands and tenements, of the said Patrick Burke you cause to be made and levied the damages, together with costs aforesaid, and that you have the said damages and costs before our said circuit court, at the next February term thereof, on the second day of said term, and
83 you then and there certify how you have executed this writ.

In testimony whereof I, R. Striblong, clerk of the said court, have hereunto set my hand and (L. S.) affixed the seal of the said court this 23rd day of November, 1857.

R. STRIBLONG, *Clerk.*

I do certify that I have executed the within by putting the within-named Wm. H. Gaines in possession of the within-described property on the 26th day of November, 1857, as I am within commanded and the within named; and I further certify as to within-named damages of one hundred dollars, &c., I did not levy the same of the goods and chattels, lands and tenements, of said defendant Burk as I am within commanded because as to said damages I was enjoined and restrained by writ of injunction issued in that behalf by the clerk of Hot Springs county upon a bill filed by said Burk and others for that purpose this Feb'y 15th, 1858.

JOSEPH JESTER, *Sheriff.*

In the Matter of the Claim of Wm. H. Gaines and Maria Gaines, No. 784, Consolidated with Sundry Other Cases.

Monday, *February 11th*, 1878.

Forenoon Session.

Come now the claimants, William H. Gaines and Maria
84 Gaines, by their attorney, Hamilton Benjamin, and offer in evidence in support of their claim the following, to wit:

1. Certified copy of a transfer by Nancy Moore on the 3rd day of March, 1829, to Alexander L. Rogers, and assigned by said Rogers on the 5th day of December, 1829, to Wm. H. Moore, and on the 4th day of March, 1830, assigned by said Moore to L. Belding.

2. Certified copy from the records of the General Land Office of an application to the Secretary of the Interior by the attorney of the Belding heirs to purchase a certain quarter section of land in the Hot Springs Mountain reservation, together with the endorsement of the Attorney General in favor of the right of said Belding heirs to enter said land.

3. Instruction of the Secretary of the Interior, dated November 21, 1851, to the Commissioner of the General Land Office in regard to allowing said Belding heirs to enter said land.

4. The instruction of the commissioner of public lands, under date of August 20, 185–, in the form of a letter.

5. Copy certified by the register of the land office of the instructions issued by the Commissioner of the Land Office.

6. The application of the heirs of Ludovicus Belding to purchase and enter the southwest quarter of section 33, township 2 south, 19 west.

85 7. Receipt of the receiver of the land office, B. F. Hempstead, No. 6545, dated December 19th, 1851, for $200, for patent certificate for the southwest quarter of said section 33, township 2 south, 19 west.

8. Bill of sale of improvements of Abigail Dupas, late Abigail Sabin, dated March 25, 1852, to William H. Gaines.

9. Certified transcript of a judgment rendered in the Hot Springs circuit court at the February term, 1858, in favor of William H. Gaines *et al.* and against Jacob Sweiptzer.

10. Certified transcript of a judgment rendered in the Hot Springs circuit court on the 25th day of February, 1856, in favor of William H. Gaines and others and against Jacob Sweiptzer.

11. Certified transcript of a judgment of dismissal of appeal in the supreme court of Arkansas, dated February 18th, 1859, in case Wm. H. Gaines *et al. vs.* Jacob Sweiptzer, said judgment being the same rendered in the circuit court of Hot Springs county at February term of 1858.

12. Certified transcript of the record entry of the supreme court of Arkansas on appeal in said cause, dated July 6th, 1857, being in the case wherein judgment was rendered on the 25th day of February, 1856, in the Hot Springs circuit court.

86 13. Certified transcript of record entry in the Supreme Court of the United States in same case, December term, 1859.

14. Certified transcript of record in the supreme court of Arkansas in same case, dated in 1860.

15. Certified copy of record entry of the supreme court of Arkansas made on the 18th day of February, 1860, in the cause wherein judgment was rendered on the 25th day of February, 1856.

16. Certified copy of a judgment rendered on the 15th day of February, 1858, in the Hot Springs circuit court, in favor of Wm. H. Gaines *et al.* against Abraham Kempner, being the same incorporated with the petition of William H. and Maria Gaines, No. 784.

17. Certified transcript of the record entry of the supreme court in same case, appealed, made on the 18th day of February, 1860.

18. Certified transcript of record entry in suit in ejectment of William H. Gaines *vs.* Edmund Mills and Roxana Butler in Hot Springs circuit court, made February 25th, 1856.

19. Certified transcript of record entry of the supreme court of Arkansas in the case of Edmund Mills *et al. vs.* William P. Gaines, dated July 6th, 1857.

20. Certified transcript of record entry of the Supreme Court of the United States, on appeal of same case to that court, made
87 on the 9th day of January, 1860.

21. Certified transcript of record entry in the supreme court of Arkansas in same case, dated February 18th, 1860.

22. Certified transcript of record entry of the Hot Springs circuit court, in 1856, showing judgment against John C. Hale in favor of William H. Gaines and others, together with certified transcript of three record entries in same cause in the supreme court of Arkansas; also certified transcript of record entry in same case in the Supreme Court of the United States. (Messrs. John M. Harrell and W. P. Walsh enter their several objections to the admission of the foregoing transcripts in behalf of sundry claimants represented by them.)

23. Certified transcript of record entries in the supreme court of Arkansas in the case of Henry M. Rector *et al. vs.* Wm. H. Gaines *et al.*, together with a certified transcript of record entries made in the Supreme Court of the United States in the same cause.

24. Certified copy of record entry in the Supreme Court of the United States, December 2nd, 1859, in the case of William H. Gaines *et al. vs.* Loretta T. Hunter.

25. Certified transcript of judgment rendered in the Hot Springs circuit court on the 25th day of February, 1856, in favor of
88 William H. Gaines *et al. vs.* James Sumpter.

26. Writ of possession in case of Patrick Burke *vs.* Wm. H. Gaines *et al.* in the supreme court of Arkansas.

27. Certified transcript of record entries in the supreme court of Arkansas in the case of Loretta T. Hunter *vs.* Wm. H. Gaines *et al.*, July term, 1855.

28. Writs of possession, with the sheriff's return thereon endorsed, in case of Wm. H. Gaines *et al. vs.* J. W. Parker, Hot Springs circuit court, March 3rd, 1856, returned same day.

9. Writs of possession and sheriff's return thereon in case of Wm. H. Gaines *et al. vs.* J. W. Parker, in the Hot Springs circuit court, issued March 3rd, 1856, and returned March 11th, 1856; also writ of possession and sheriff's return thereon in the following cases, in all whereof Wm. H. Gaines *et al.* were plaintiffs, to wit: Richard Puckett, issued March 3rd, 1856, returned March 10th, 1856; Harrison D. Flowers, issued March 3rd, 1856, and returned June 16th, 1856; Samuel Macklin *et al.*, issued March 3rd, 1856, returned March 10th, 1856; Abigail Sabin, issued March 3rd, 1856, returned May 1st, 1856; Patrick Burke, issued November 23rd, 1857, returned Feby 15th, 1858; James Sumpter, issued March 3rd, 1856, returnable March 10th, 1856; all of which are certified by the clerk of Hot Springs county in 1858. (John M. Harrell and W. P. Walsh severally in behalf of sundry parties represented by them object to the admission of the above-described writs.)

89 WILLIAM H. GAINES, being first duly sworn, testified as follows:

Questions by his attorney, H. BENJAMIN:

1st Q. State your name, age, and residence.

A. Wm. H. Gaines; age, 80; residence, Hot Springs.

2nd Q. State to the commission in your own way the general history of this case.

A. My name is Wm. H. Gaines, 80 years of age, and have kept house here for the last 25 years. I am one of the claimants in claim No. 784. I married one of the heirs of Ludovicus Belding in the year 1849. I do not recollect what year it was, but think it was about the year 1851, I went to Washington to investigate all the claims on the Hot Springs property. I found Mrs. Belding had proved up a pre-emption in the year 1839, and came to the conclusion that she had the best title of the three claims I found in the Land Office. I employed A. H. Lawrence to investigate those claims, and came to the conclusion to prosecute the claim of the Belding heirs, and made application to the Secretary of the Interior to have that claim referred back to the district land office to be reproved up, clothing the other claimants with authority to examine, disprove, or invalidate the testimony if they saw fit. I do not recollect exactly what time we were in Washington, but think it was in the summer or fall of 1850. It was referred back to the district land officers to be reproved and investigated, and on the 22nd of January, 1851, Lydia Belding, widow of Ludovicus Belding, relinquished her right in favor of her children, the heirs of Ludovicus

90 Belding. The proof was taken up and well cross-examined by Rector and Hale. When the proof went to Washington her attorney made application to enter the land, which the Commissioner of the Land Office refused, and he appealed to the Secretary of the Interior. The Secretary of the Interior first decided against the entry, and we appealed to the Attorney General. The Secretary of the Interior in his letter to the Commissioner, after a full consideration and consultation with the Attorney General, came

to the conclusion that it was right and proper to admit the entry of the Belding heirs, and directed him to so instruct the district land officers in Arkansas. He did so instruct them, and the entry was made in the name of the four heirs, and I advanced the purchase-money, the sum of two hundred dollars, which was paid to the Government and which the Government still holds. It has never been repaid to the heirs. When I entered this I received a patent certificate in the name of the heirs for the southwest quarter of section 33, township 2 south, range 19 west, in the State of Arkansas. After getting the certificate of entry I came directly to the Hot Springs and purchased of Abigail Sabin all her improvements east of Hot Springs creek, which included all the improvements east of said creek except a small house occupied by Richard Puckette, where the Hot Springs house now stands, and a small cabin above the Puckette house and a cabin and mill near the now Malvern
91 crossing and an enclosure below the Malvern crossing and between the Malvern road and Hot Springs creek of Patrick Burke. Said Abigail Sabin's improvements consisted of a lot of cabins, cribs, stables, gardens, and lots where and near where I have since resided at the springs, and also included two springs on the mountain and a large field east of the New Malvern road and south of the now Gaines avenue, making in all 20 acres, more or less. These improvements purchased, with the exceptions named, were all the improvements that were on the south half of the southwest quarter of section 33, township 2 south, range 19 west, east of the Hot Springs creek. These fields were all enclosed with fences when I bought them, and had been in cultivation apparently for several years, and have been occupied by me and kept fenced ever since—from the time of said purchase up to and including the 24th of April, 1876—and a large portion of the time I have had them in cultivation. At that time there was no one living on this quarter section, east of the improvements I bought of Mrs. Sabin, and continued to be none until after the close of the war. I took charge of the land and prevented people from cutting timber as long as I could keep them off, and paid taxes on it from the time it was entered to the date of the decree. The improvements that were excepted were right along on the creek bank. The west side of
92 Hot Springs creek, at the time of making this entry, was in the possession of Lawson Runyon, Abraham Kempner, Mrs. Belding, Mrs. Julian, Patrick Burke, James Sumpter, E. G. Malone, Edmund Mills, Harrison D. Flowers, Abigail Sabin, Sam. and Oney Macklin, and Jacob Switzer, and on the 5th of January, 1852, in the name of myself and Belding heirs I commenced suits of ejectment in the Hot Springs circuit court against Richard Puckett, Harrison D. Flowers, Patrick Burke, Abigail Sabin, James Sumpter, and soon thereafter I commenced suits against Jacob W. Parker, who was in possession of the mill and cabin, and Edmund Mills, James Switzer, and Abraham Kempner. I recovered judgment in the first lot of cases commenced in 1856, and writs of possession were issued on said judgments and I was put in possession of the property. I afterwards recovered judgment in the other cases and was put in posses-

sion of the property, most of it on the 6th of March, 1856. I continued in possession of said property until dispossessed by the decision of the Supreme Court of the United States, April 24th, 1876. During that time several parties tried to jump my possessions, but I have always applied to the court and dispossessed them. The improvements claimed by E. G. Malone I purchased soon after I bought out Abigail Sabin. I repaired the cabins, lived
93 in them three or four years, and then built my dwelling-house that my family has resided in and occupied up to last December. Soon after I purchased of Abigail Sabin I enlarged my fields and repaired and built new fences and took in ten or twelve acres more of ground on what is now the north side of Gaines avenue. Soon after I was put in possession by the writs above named I commenced building new hewed-log cabins. I built three double log cabins and afterwards built one more log cabin joining the property that had been occupied by Mrs. Julian. On the west side I enclosed it all with a good fence, on the east side of what is now Valley street, commencing near the bridge that crosses the creek south of the Hot Springs hotel and extending down to about two feet into the now Cohn building. Mr. Turnbull put up a theatre one hundred feet long, forty feet wide, and seventeen feet high. George Belding and I purchased this theatre of Turnbull in 1859, and George Belding afterwards sold his part of the house to me, and below the theatre, the same fall, I built a large room for a dining-room, and put up two good size log rooms in front of the dining-room with a hall between them, about six feet south of the south end of the theatre, and cut the theatre up into, I
94 think, thirty-two bed-rooms, afterwards making a two-story house for the purpose of boarding-house or hotel. About this time I enclosed all below the property that had formerly been occupied by Switzer between the street and the creek, west of the creek, down to the section line, and made a kiln of brick there. I made no other improvements of importance until after the close of the war. At the beginning of the war, including the houses that I purchased and recovered by suits of ejectment and built myself, I had twenty houses, one mill, one house used for a hotel, and one of the twenty houses was a row of houses of ten or eleven rooms that I recovered from Sumpter. During the war the hotel house, formerly the theatre, was destroyed by marauders and trespassers, so that I had to tear down the remnants to save what lumber there was. During the war the improvements that I had recovered of Burke that were on the east side of the road where the Nichols, Vaughn, and Ducker buildings now stand were destroyed by fire; they were burned by Federal troops. These troops also burned the row of houses recovered from Sumpter, and also the house that I purchased of Malone. In the spring of 1865 Mrs. Gaines fenced in nearly all the ground recovered from James Sumpter east of the
95 now Sumpter house. The houses formerly upon this ground were burned during the war. I had a number of the old houses that were left standing repaired so as to make them tenantable. Soon after repairing the old houses I caused to be fenced up

all the property between the Malvern road and Hot Springs creek down to the line to be used for a brick yark, and had the fences repaired for the fields that I had before the war, and cultivated and occupied the same until after the decision of April 24th, 1876. In 1870 Mrs. Gaines, one of the petitioners, built the Hot Springs hotel, which was the first fine hotel ever erected in Hot Springs. It cost about twenty-four thousand dollars and was the principal and leading hotel until the Arlington was built. The same year I built the house now held, under a lease from the receiver, by William Staats and also claimed by him before this commission, the said house being situated the second house below the Malvern crossing, on the east side of Valley street. This house cost five hundred dollars. In 1871 I built the barber shop north of the Hot Springs hotel, which cost about one hundred and fifty dollars. I also built the office south of the Hot Springs hotel now occupied by

96 Dr. Taylor, which cost about four hundred dollars. I also, the same year, built the bakery, the first building south of Dr. Taylor's office, which cost about four hundred dollars. Soon after this year I built the house south of the now Malvern crossing, which is now held under a lease from the receiver and claimed by Rachael Bertsch. I next built the house and stables south of the now Cohn house, and which are now held, under a lease from the receiver, by Thall and others. These buildings cost about six hundred dollars. The next building south of the stable I bought from Cloyes. This building is now held by Julius Breytie under a lease from the receiver, and is also claimed by Breytie before this commission. I soon after bought of Leeson the house on the west side of the street just south of the house of Sutton, the cost of which is estimated at a thousand dollars. I also built three cottages north of the cemetery, which cost six hundred dollars apiece. I also built two storehouses south of the Garland house, which cost about nine hundred dollars. I also built two cottages on the Malvern road nearly west of the cemetery, one costing six hundred dollars, the other three hundred. I also bought a house of N. H. Cloyes south of these two cottages on the Malvern road for three hundred dollars. I also bought a blacksmith shop on the Malvern road. I also bought a stable of Mr. Bell on the

97 Benton road. In the year 1874 I fenced all north of the Benton road to near the east line and to what I supposed to be the east line and north on the east line away up into the mountain and thence west to include the hot springs obtained from Abigail Sabin. This fence made a complete enclosure of all the ground now claimed by me north of the Benton road. This was a good, substantial fence, except some portion of the mountain, where it was impossible to make a first-class fence. In addition to buildings put up by the petitioners in person I made fifty or sixty leases or contracts to various persons to put up buildings on the ground claimed and occupied by me. In a large portion of these cases my old buildings had to be torn away to make room for better buildings. I enlarged my residence by building eight rooms, which cost me about sixteen hundred dollars. I have resided continuously

upon the property claimed in the petition ever since the year 1852 until December last, a period of about twenty-six years, and during all that time the petitioners are the only ones that have occupied this ground as their own except a few negroes in the southeast corner of the quarter section, who have been holding adversely to your petitioners. With this exception there has been no one since I recovered these lands, in the year 1856, who has lived upon any portion of it and claimed or occupied the same as their own.

98 Your petitioners are and have been all this time the sole occupants in their own right. All other parties, with the exception of the negroes referred to above, that have lived upon the same have done so under contracts with your petitioners, recognizing and treating them as landlords. During all this time I believed that I had the title to said lands and have paid taxes upon said lands ever since I entered and paid for the same at the United States land office. I know of no one else that has paid any taxes upon said lands or ever pretended to give them for assessment. I so strongly believed that this property was mine and that I would get a title to it that I paid the taxes for the year 1875 only a few days before the decree of April 24th, 1876. I have been a *bona fide* occupant of these lands for more than a quarter of a century, and during that time I have exercised and had the same control over the lands claimed that any person could or would exercise over lands that they held a patent for from the United States. When A. O. Morgan, the United States receiver, took possession I was the first man on the reservation to turn over my property to him. I turned over all property held by myself, both that held in person and that held by my tenants.

99 Cross-examined by JOHN M. HARRELL, representing No. 1, claim of Algernon S. Garnett, M. J. Towle and wife, James O. Ducker, Rachel Burch, and sundry other conflicting claims:

3rd Q. You say your fence north of the Benton road fell short of the section line?

A. Yes.

4th Q. How far?

A. I cannot say exactly.

5th Q. Did it go beyond the ground of James O. Ducker?

A. Yes; it enclosed that ground.

6th Q. You use the word "enclosed," understanding what it means, and deliberately, do you?

A. Yes; I had it all under fence.

7th Q. Did you not merely build a line of fence between him and the road and stop there?

A. I enclosed every inch of that ground.

8th Q. You had Mr. Ducker under arrest for trespass about 10 days, had you not?

A. Yes; I had some trouble with him. He broke my fence down.

9th Q. Did you take the lumber that he had on that ground and appropriate it to your own use or cause it to be appropriated?

A. No, sir.

10th Q. What did you do with the posts he put there?

A. I never had anything to do with them. I do not know who removed them. I think I stopped him by injunction.

100 11th Q. How many buildings do you say you had possession of just before the war?

A. About 20.

12th Q. Where did they stand?

A. The theatre building stood south of the Hot Springs hotel, for one. I have mentioned all these places already in my testimony.

13th Q. They were destroyed during the war by fire?

A. Yes, sir; the theatre was getting destroyed by their tearing doors down, and so on, and there was a great deal of good lumber in it, and I tore it down to save it from being destroyed.

14th Q. Which of the buildings were not destroyed?

A. My dwelling-house was not. The church was not destroyed. Above there there were some few cabins along where the Citizen's stable is, from there down to the St. Louis saloon, that were destroyed. The buildings that I put up previous to the war, along down the lower end of the valley, were not destroyed. On the west side of Valley street there were 8 log cabins that I built that were not destroyed. There were three double ones and one with two rooms in it, making eight rooms in all. They commenced down about where Smith's mattress-house is and ran up north. They were about 20 feet apart.

Q. Are those buildings there yet?

101 A. No, sir; they were torn down in order to lease the ground. Some of them fell down, and I may have hauled them off or given them away. They ran up to the new Malvern crossing, and the north one a little higher, maybe.

Q. When did you fence in from the Malvern crossing down to the section line?

A. In 1858, after I built the log cabins. I fenced along in front of them, leaving a space between the fence and the cabins of 8 or 10 feet. It was plank fence; it was burnt up and torn away during the war.

Q. Did that fence form an enclosure?

A. Yes.

Q. Was there another fence in the rear of the house?

A. Yes; there was a rail fence between the Sumpter ground and the Burke ground.

Q. Whose property did you claim that to be in 1858—those cabins and that fence?

A. I was acting as agent for the Belding heirs, but I claimed the house that I put up as my own. They were put up and purchased with my own money.

Q. Those 20 houses that were standing there just before the war you claimed as the property of the Belding heirs, did you?

A. No, sir.

Q. Which of them did you claim as your individual property?

102 A. My residence and those log houses that I built.

Q. Did you claim the old theatre?

A. Yes; and the log houses south of the theatre. I built them—that is, on the east side of Valley street.

Q. State what you think those houses and all the property claimed by you was worth at that time.

A. The theatre cost me $1,700; the log houses south of it—I worked on them with my own hands—they are, all together, worth about $500, on the theatre side of the street.

Q. What were those buildings that were on the other side of the street worth, from the mattress-maker's up?

A. Labor was cheap when I built them; they were simple log cabins, one room, 16 or 17 feet square.

Q. Which was the most valuable improvement you owned at that time?

A. The dwelling-house.

Q. Which next?

A. The theatre.

Q. Did you own any other valuable improvement at that time besides the log houses, the theatre, and the dwelling-house?

A. Yes; the field that I bought of Mrs. Sabin. It is south of Gaines avenue—the biggest field. The north line of the fence

103 ran in Gaines avenue; on the west it ran out to the Malvern road; on the south to the line of the southwest quarter of section 33. The east line of the field was out somewhere beyond, where a colored man named Thal lived at that time. It was much bigger than it is now, because part of it ran down into section No. 4. I think more than half of it was in section four. It included where that house was and several other lots up there. My purchase included lots around my present dwelling-house and a little field, in woods, where the cemetery is. I fenced in 10 or 12 acres north there and drew the fence in so as to turn over to Mrs. Sabin what was outside of what I entered. I drew the line in on the east to make it more square. I fenced in what lies north of Gaines avenue a year or two after I bought it, as soon as I knew where the lines were.

Q. Was it enclosed when you bought it?

A. It was.

Q. What did you consider it worth?

A. I paid $700 for it. I consider it worth all of that.

Q. What other valuable property did you own at that time?

A. I have stated all about that. I had a kiln of brick made on the east side of Valley street, between that and the creek.

104 That was the first brick-kiln I had made; that was made before the war. After the war I contracted with Cloves to make brick for me and gave him a percentage of what brick he made. On that thin strip of ground, where the Cincinnati house burned down and where the Surprise house stands, was made two kilns of brick, and that was done since the war.

Q. Which was the property of the Belding heirs?

A. I have a transfer from them; it is all mine.

Q. Were those transfers made prior to your petition in bankruptcy?

A. Very recently; since they have been hunted up to give me trouble.

Q. Did you put in any of this property in your petition in bankruptcy?

A. I did not. I consulted my lawyer, Judge Watkins, who knew all about it, and he said it should not go in. I went through bankruptcy and was honorably discharged seven or eight years ago.

Q. When did you file your petition in bankruptcy?

A. I cannot recollect the date.

Q. Did you transfer it then to the Belding heirs?

A. No, sir.

Q. You did not see proper to claim it when you went into bankruptcy?

A. I did not.

Q. You bought certain improvements that were erected?

A. Yes.

105 Q. Were they within these enclosures that you speak of?

A. Yes; all except the part of Mrs. Sabin's field, which I gave back to her.

Q. In whose right do you make your claim now to this property?

A. In the right of Maria Gaines and myself.

Q. Did the Belding heirs file any petition?

A. No, sir; I am controlling it all myself.

Q. Where was this Cloyes house that you bought?

A. Part of the brick yard there.

Q. Where was the blacksmith shop?

A. It is there now. I bought it from Cloyes. It was considered in the $300. There were some improvements that he had put on it that I bought of him. It was considered in the $300.

Q. You say that since you recovered these lands, in 1856, no one has resided on them except yourself or owned them?

A. I do not think that anybody has ever claimed them in their own right as we have.

Q. What lands are referred to in your petition?

A. The southwest quarter of section 33, township 2 south, — 19 west.

Q. How do these people happen to be there unless they have resided on it?

A. They were not there in their own right.

Q. Some of them have built improvements upon it, have they not?

106 A. Yes.

Q. And without your assistance?

A. They generally leased the ground from me.

Q. Did M. W. Towle lease any from you?

A. He made a bargain with my agent to lease it. I have no written lease.

Q. Did you contribute any money to the building of the improvements erected on that ground by Mr. Towle or give him any assistance of any kind?

A. No, sir.

Q. Who built the Salmons house, near the Methodist church, that Mrs. Burch lives in?

A. Allen Salmons.

Q. Did you agree with him to let him have that 20-feet alleyway leading down from his house?

A. No, sir; I might have agreed to let him use it. He agreed that he would keep off of the quarter section, and I believe he did. I do not think it is on that quarter section at all.

Q. The new Valley house, now used as the court-house, did you contribute any money or any assistance to the erection of that building?

A. Yes, sir; I loaned the old man fifty dollars, and he said he wanted to put it in that building.

Q. Did you know him very well?

107 A. He had been a very good tenant and paid punctually and he leased the ground. I have his note for $50 for the money I lent him. He wanted to keep it, and I told him to keep it awhile.

Q. His note is out of date, is it not?

A. I do not think it is.

Q. That is all you had to do with erecting that house?

A. Yes.

Q. The house of Mr. Ducker, the three-story house on the corner of Malvern crossing, did you contribute money or assistance to the erection of that house?

A. No, sir.

Q. The stable that Gillis had and sold there, did you contribute any money to build that or any means of any kind?

A. Yes; I furnished all the lumber.

Q. You have stated all the buildings you have erected since the war, have you?

A. Yes; I aimed to name every one that I erected. I show vouchers for the building and leasing my house to Burch, and so on. Then it was turned over to the receiver. He has held possession. Those are the houses I built myself. The Gillis property was built by me under written contract.

Q. Did you make any distinction in your testimony between the buildings you erected and those built by old tenants?

108 A. I have not said a word about my tenants' building; only that I had 50 or 60 tenants who leased. I described my own buildings.

Q. You said in your testimony that you were the first man that turned over that property to the receiver. How did you turn it over?

A. I had an interview with Mr. Morgan, in which he told me that he would live up to the instructions of Judge Gray, and that my tenants should have the preference in the right to lease. I thought

maybe I could get a chance to lease my houses. I tried him the second time, and he was very positive that my tenants should have the preference. I told him I would throw no obstacle in his way, and that if he would send his clerk around with me we would go around, and I would show him every house I owned and tell him who lived in it and turn them over to him, which was done. Captain Peck went around with my son, who was attending to the collection of the rents for me, and he turned the houses over to him. My tenants then leased from the receiver. The houses were not turned over to the tenants.

Q. The receiver preferred to lease the ground to the occupants?

A. Those were his instructions.

Q. What did you lease from the receiver?

A. I first leased my dwelling-house—my wife did.

109 Q. How much property did you lease in connection with your dwelling-house?

A. There was a little difference between Mr. Morgan and me. I got him to make out the application himself in his own handwriting. I meant it to include all my lots, but he never would give me the lease. I paid the monthly rent that he put on my dwelling-house—all that was under fence. I told him I wanted to take a lease for the whole of it, but he did not want to give it to me, but he never leased it to anybody else. People came to me to lease from me, but I never had any transaction since, except to sell Mr. Wilson a stable. I do not know whether it was a few days before the decision of the Supreme Court or a few days afterwards. I disclaimed owing anything till the act of Congress was passed giving me a show for my possessions there.

Q. You leased your residence at first?

A. I rented it. Afterwards, as the tenants went away, some cottages that I had I offered to Mrs. S. H. Stitt and let her lease them. At the north end of the cemetery there were three cottages and 2 store-rooms, and it may have included this Surprise house. I am not sure but there were six in all. They were on the east side of the creek. I leased those; then I leased three houses to

110 Albert Gaines, Dr. Taylor's office, and the Smith house, on the west side of Valley street, the two cottages and the Cloyes house to Mrs. Williamson.

Q. What two cottages were those?

A. They were the two lying between the Malvern road and Hot Springs creek, opposite the cemetery. Those cottages Mrs. Williamson, my daughter, leased, at my request, from the receiver. They were given to her. I bought a little shanty that was back of the Burch house; that was his own transaction. I think he leased that from the receiver.

Q. You say you have filed in this case the transfer from the Belding heirs to yourself?

A. I will do it. I have the conveyance of recent date. One was signed in Texas and the other here. Albert Belding signed his, George signed his, and Henry signed his. It has been within the last three months.

Q. Your plat shows how far your line runs, does it?

A. Yes; it includes Wilson's stable, the Hot Springs hotel, and the barber shop this side.

Q. Did you pay any taxes on this property in your own name?

A. No, sir; in the name of the Belding heirs.

Questions by Mr. CURL, representing Sumpter, Kemper, and other claimants:

Q. State if you acquired any possession west of Hot Springs creek originally by virtue of purchase, or was it all by virtue
111 of the Beldin heirs' certificate of entry.

A. I bought the Malone house, that covered the ground where the St. Louis saloon now stands, in 1852, soon after I bought Mrs. Sabin's ground.

Q. Any others?

A. No, sir; not on that side.

Q. Then the balance of your possessions on that side were acquired by virtue of the certificate of entry of the Belding heirs?

A. No, sir. I took possession of the vacant ground and built those log cabins.

Q. My question is if the balance of the possessions you acquired on the west side of the creek were acquired by virtue of the entry of the Belding heirs.

A. Yes; except that there was a good deal of vacant ground that I took possession of there.

Re-examined by Mr. BENJAMIN:

Q. State whether some of the ground occupied by Mr. Runyon and Mrs. Beldin was not turned over to you by agreement without suit.

A. Yes; that was vacant ground. Mrs. Beldin had a house this side of the well and Runyon had a cabin south of the Kempner property there.

And further saith not.

FEBRUARY 11TH, 1878.

In the Claim of WM. H. and MARIA GAINES, No. 784—Continued.

ROBERT B. RUNYON sworn and examined.

112 Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Robert B. Runyon; age, 26, and reside at Hot Springs.

Q. How long have you resided at Hot Springs?

A. I was raised here.

Q. Are you acquainted with Wm. H. Gaines and wife?

A. Yes, sir.

Q. State whether you know anything about the possession that Lawson Runyon had upon this quarter section, where it was, and who he was.

ing, having become the owner of said claim—to wit, by a deed from Albert, George, and Henry Belding for one-half of each of their claim to the pre-emption claim — Ludovicus Belding as aforesaid to Wm. H Gaines, dated June 1, 1860, a copy of which is hereto attached, marked Exhibit —, and made part hereof; also a deed from Albert Belding to Wm. H. Gaines, for his entire interest in said claim, dated —, a copy of which is attached, marked
8 Ex. —, and made part hereof; also deed from George Belding, dated —, and a deed from Henry Belding for their entire interest, copies of both of which are in Exhibit "A" hereto—aver that in less than six calendar months after the first sitting of the Hot Springs Commission, under the act of Congress of the United States entitled "An act in relation to the Hot Springs reservation, in the State of Arkansas," approved March 3, 1877, they filed their claim before said commission to purchase said lots, and that John J. Sumpter filed a like claim, and that upon the hearing of said claims they were consolidated by said commission for the purpose of hearing the testimony; and said petitions filed and the testimony taken before said commission clearly showed that John J. Sumpter had acquired his possession in no other way but by said lease made by plaintiff Wm. H. Gaines to said D. P. Beldin, as will more fully appear from a complete copy of the petition, testimony, and record entries in said claims filed herewith and marked Exhibit "A"
9 and made part hereof; and, notwithstanding that said petition and testimony showed that defendant John J. Sumpter acquired possession only by virtue of said lease, still said commission misconstrued the law applicable to that state of facts and awarded the right to purchase said lots to defendant *and* John J. Sumpter, and since said award said defendant has purchased said lots from the United States and received a patent therefor, and on account of said misconstruction of the law as applied to the facts before said commission the right to purchase said lots, which in law, equity, and good conscience should have been awarded to plaintiffs, was by said misconstruction of the law illegally and wrongfully awarded to defendant John J. Sumpter by said Hot Springs Commission.

Plaintiffs aver that as defendants have never had any other right or title to said lots or to the possession thereof than that which they derived from said lease and under covenants to restore possession to plaintiff Wm. H. Gaines, that said defendants should be
10 held to hold said lots as trustee for the use and benefit of plaintiffs.

Plaintiffs offer to pay any sum of money that may be found due to the defendants or either of them by reason of any money paid to the United States for the purchase of said lots, and to do all other acts which may be found to be just and equitable.

Plaintiffs aver the property herein sued for is worth more than five hundred dollars, and that this cause of action arises wholly under the law of the United States.

Plaintiffs ask that defendants be required to answer this bill, but not under oath.

And pray that an account may be taken of the state of accounts between themselves or either of them and said defendants severally; that they may be allowed reasonable rents for the occupancy of the said premises; that defendants may be decreed to hold said lots as trustees for the plaintiffs, and to convey the same to the plaintiffs, and that they may have such other relief as may be equitable.

M. W. BENJAMIN & R. G. DAVIES, *Sol's.*

Filed & writ issued May 23, 1884.

RALPH L. GOODRICH, *Clerk.*

11 UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 14th day of April, anno Domini one thousand eight hundred and eighty-four, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On June 28, 1884:

Come the defendants, by George G. Latta, Esq., their solicitor, and file herein their demurrer to bill; which demurrer is in the words and figures following, to wit:

United States Circuit Court for the Eastern District of Arkansas.

WILLIAM H. GAINES & WIFE }
v.
D. P. BELDIN & JOHN J. SUMPTER. }

Comes the defendants and demur to the complaint filed herein, and for grounds of demurrer state —

12 That the court has no jurisdiction of the subject of the action.

That the complaint does not state facts sufficient to constitute a cause of action against the defendants or either of them, and that there is no equity in the complaint.

Wherefore the defendants pray for judgment and for other relief.

GEO. G. LATTA,
Att'y for Def'ts.

Filed June 28, 1884.

RALPH L. GOODRICH, *Clerk.*

13 And on August 7, 1884, as follows:

Come the defendants, by Geo. G. Latta, Esq., their solicitor, and by leave of the court file herein their answer; which answer is in the words and figures following, to wit:

United States Circuit Court, Eastern District of Arkansas.

WILLIAM H. GAINES and MARIA GAINES, His Wife,
v.
D. P. BELDIN and JOHN J. SUMPTER.

Comes D. P. Beldin and John J. Sumpter, the defendants herein, and for answer to the complaint in this action state that the allegations of the complaint, wherein is stated that Ludovicus Belding entered the southwest quarter of section 33, township 2 south,
14 range 19 west, in pursuance of the instructions of the Secretary of the Interior and in accordance with the pre-emption laws of the United States, and that plaintiffs, William H. Gaines and Maria Gaines, Albert Belding, Henry Belding, and George Belding, under the supervision and control of William H. Gaines, brought suit in the Hot Springs circuit court against —— —— and recovered judgment for the possession of said land, and, in accordance with said judgment, was put into possession of said property, and the plaintiff held peaceable possession of said property, and that plaintiffs built houses on said property and continued in the ownership of the same, are all untrue and not as stated by plaintiffs.

They deny that D. P. Belding conveyed his right to said lot 10, B. 130, by relinquishment merely, and that defendant sold and conveyed to Smith and Sumpter, and that Smith in turn sold and conveyed to J. J. Sumpter, and that both of said sales were made subject to the lease from Gaines and the promises therein
15 contained; that they deny all of the allegations of said complaint in reference to the lease as alleged to be executed by Wm. H. Gaines and D. B. Beldin.

The defendant Sumpter denies that at the time of acquiring possession of the said land that he knew of the lease or anything therein contained. The defendants deny that they derive their right or possession of said property from the said Wm. H. Gaines or Maria Gaines.

The defendants deny that said commission misconstrued the law applicable to the state of facts and awarded the right to purchase said lots to defendants wrongfully, and that the award thereof to said defendants was wrong and in violation of the law and antagonistic to the evidence introduced in support of defendants' claim to said lot. The defendants further say that if D. P. Beldin ever leased from the plaintiff William H. Gaines any land, it was vacant and wholly unimproved at the time, and the instrument called a lease was
16 an unlawful contract; that if said plaintiffs did make to said D. P. Beldin a lease for the tract of land now embraced in lot numbered ten, in block No. 130, it was made on the — day of ——, —, for the term of one year from the — day of ——, 187-, at an annual rental of —, in quarterly payments of $— each, on the —, and that said lease was to be renewed from year to year, at the election of said Beldin, until the title to said quarter section should be settled, on the same terms and conditions, and that it was stipulated thereby that the lessee should have the right to remove within

thirty days from the expiration of the term all buildings and improvements which *they* should erect or build on the land, and that said lessee should not sublet or assign without the written consent of said plaintiffs.

That said defendant, John J. Sumpter, never leased said
17 tract of land or any part of it from any one; that Sumpter and Smith, a firm engaged in the banking business in the city of Hot Springs, acquired the possession of and the right to said lot from D. P. Beldin without knowledge of his — of title, and the firm of Sumpter and Smith dissolving, the said Sumpter succeeded to all the property of the said firm, and the said property then became the property of the banking firm of Sumpter and Latta, which firm succeeded the firm of Sumpter and Smith, and the said Sumpter held the same for the use and benefit of said firm of Sumpter and Latta & Co., and the said Sumpter and Latta had enjoyed uninterrupted possession of same without interference on the part of the plaintiff or any one else, and the said lot was a portion of the said property, and the said Sumpter and Latta knew nothing about said lease or had knowledge thereof; that the said Sumpter and Smith erected on said lot a frame building that
18 was afterwards destroyed by fire, and that after said fire another building was erected on said lot by Sumpter and Latta, which is now upon said premises.

The defendant Sumpter states that while he was in nowise a party to said lease, yet he believes there was a lease executed by the said Beldin, but said lease was to cease and determine after the decision of the court should decide the title to the Hot Springs reservation suit, which decision of the Supreme Court of the United States was rendered on the 24th day of April, 1876, whereby said quarter section was decided to be the property of the United States and not the property of the said William H. and Maria Gaines.

That when said decision was rendered the plaintiff never demanded of any one rent for said tract of land after said 24th April, 1876, and no rent was paid after said date; that said plaintiff in person and by his authorized agents stated to defendants that if defendants would pay up rents to said date as aforesaid,
19 which rents were then in arrears, that plaintiff Wm. H. would have no further claim upon them.

That *plaintiff*, in June, 1876, when the receiver of the Hot Springs reservation appointed on behalf of the United States by the Court of Claims took charge of the Hot Springs reservation, the said plaintiff, Wm. H. Gaines, gave said receiver a list containing the names of those who were formerly his tenants and who had paid him rent, and requested him to take possession of the lands so occupied by said tenants, and particularly the tract of land leased to said defendant, D. P. Beldin; that said plaintiff, William H. Gaines, made no effort to carry out his obligations to the defendant D. P. Beldin or to keep his covenant contained in said lease, that defendant should have the right to remove his improvements, as provided by said lease; that the plaintiff, on the contrary, urged said receiver

to take charge of said improvements and urged all of his ten-
20 ants to lease the tract of land held by each of said tenants from said receiver and to relieve plaintiff from all liability by reason of their eviction and the breach of the said stipulations of the said lease, assuring them that if they would do so he would assist them to acquire the title from the United States in their own right; that they unwillingly agreed to this after repeated declarations and assurances on the part of the plaintiff, and rented the house and land at a greatly advanced rent from said receiver on the first day of July, 1876; that the defendant was deprived of his right as against plaintiff to remove the improvements from said land, they being ascertained by said decision to be the property of the United States; that said plaintiffs wholly failed and refused to perform such stipulation as to protect defendant in said right of removal as aforesaid; that, as against plaintiffs, defendants had the right to remove said improvements, their term being in full force as to them; that if said im-
21 provements had been removed and the plaintiffs had filed a claim before said commissioners for said lot it would have been destitute of any foundation whatever. The defendants further say that after said award to defendant Sumpter the plaintiffs openly declared that they would never make any claim to said lot or any other claim antagonistic to any award made by said Hot Springs commissioners, but would abide and acquiesce in them and remain satisfied and content with what said commissioners had awarded to them, and that when an effort was making to procure legislation by Congress authorizing a revision by this court or the Land Department of the decisions of said commissioners, which occurred in the latter part of the year 1879 and the early part of the year 1880, they vigorously opposed the same and insisted, in public meetings held on said quarter section, that said decisions were right and ought never to be disturbed, and that it would be ruinous to disturb them if it could be done; and they also told persons
22 applying to them in reference to property at Hot Springs that the titles to said property were finally settled, and that they would never sue for or claim any part of said quarter section which had been awarded to others, whereby their views and intentions, as expressed, became generally known to the occupants and residents of said reservation and to these defendants in particular; that plaintiffs never complained of said award nor put anything upon the record or elsewhere to indicate that they had any claim or right to or against said lot, but acquiesced in the same until the 23d of May, 1884, when they instituted this suit against the defendants.

Defendants state that a period of more than seven years has elapsed between the commencement of this suit and the first day of June, 1876, the date the defendant- attorned to the United States, and by the statutes of Arkansas this suit is barred, and that from
23 the first day of June, 1876, to the 23rd day of May, 1884, the date of the institution of this suit, the defendants have not recognized plaintiffs as their landlord, and during all this time defendants have had and held possession of said lot adversely, notoriously, and openly as against plaintiffs and all persons, and no action,

either at law or equity, was commenced against them by plaintiffs. The defendants further say that they owe plaintiffs no rent whatever; that the defendant Sumpter and G. G. Latta now own the improvements on the said lot of land, of the value of $1,000, which were built and made thereon when it belonged to the United States, and that they ask that they be required to pay no rent; but if it be held after a full hearing herein that plaintiffs are entitled to said lot, that plaintiffs be required to pay them for their improvements, and that the sum due or ascertained be decreed a lien on said lot and enforced as such; and said defendants paid to the U. S.
24 Government the sum of one hundred and ninety-two dollars
(192) as — money on said house; and defendants, while answering herein, in nowise withdraw their demurrer filed herein, but insist that the grounds alleged in said demurrer are good, and that said demurrer should be sustained. Wherefore they pray that the complaint may be dismissed, and that they may have proper decrees rendered herein, and that costs may be awarded them, and for all other general and special relief to which they are entitled they will ever ask and pray.

GEO. G. LATTA,
Att'y for Def'ts.

Filed Aug. 7, 1884.

RALPH L. GOODRICH, *Clerk.*

25 UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 27th day of October, anno Domini one thousand eight hundred and eighty-four, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On December 1, 1884:
The plaintiffs, by M. W. Benjamin, Esq., their solicitor, ask leave to amend their complaint by interlineation, which is granted; and thereupon said amendments are made.

On December 4, 1884, as follows:
Come the defendants, by Geo. G. Latta, Esq., their solicitor, and on motion of said solicitor leave is given them for fifteen days to file answer to amended bill herein.

On January 5, 1885, as follows:
26 Come the complainants, by M. W. Benjamin and R. G.
Davies, Esqrs., their solicitors, and file herein their replication to defendants' answer; which replication is in the words and figures following, to wit:

United States Circuit Court, Eastern District of Arkansas, October Term, 1884.

WILLIAM H. GAINES & WIFE
v.
J. J. SUMPTER *et al.*

The said plaintiffs say their bill is true, and that defendants' answer as set forth is not true, and this they are ready to prove.

M. W. BENJAMIN,
R. G. DAVIES, *Sol's.*

Filed January 5, 1885.

RALPH L. GOODRICH, *Clerk.*

27 UNITED STATES OF AMERICA,
Eastern District of Arkansas.

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 26th day of October, anno Domini one thousand eight hundred and eighty-five, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On February 5, 1886:

Come the defendants and file herein their answer to the cross-bill herein; which answer to cross-bill is in the words and figures following, to wit:

United States Circuit Court, Eastern District of Arkansas.

JOHN J. SUMPTER, ELIZABETH SUMPTER, and WILLIAM SUMPTER
v.
WILLIAM H. GAINES, MARIA GAINES, His Wife, and ALBERT B. GAINES.

28 The plaintiffs, John J. Sumpter, Elizabeth Sumpter, and William Sumpter, saving and reserving unto themselves all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the answer of the defendants, William H. Gaines, Maria Gaines, and Albert B. Gaines, for replication thereunto say that they will aver, maintain, and prove their said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied to by them; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied to and not herein and hereby well and sufficiently replied to, confessed or avoided, traversed or denied, is true; all which matters and things plaintiffs are ready to aver, maintain, and prove as this hon-
29 orable court shall direct, and they pray as in and by their said bill they have already prayed.

And the said plaintiffs, John J. Sumpter, William Sumpter, and Elizabeth Sumpter, reserving to themselves all manner of exception which can or may be taken to the many errors, uncertainties, imperfections, and insufficiencies to the cross-bill of the defendants, William H. Gaines, Maria Gaines, and Albert B. Gaines, for answer thereto and unto so much thereof as they are advised is material for them to answer, say that the allegations thereof to the effect that on the 19th day of December, 1851, Henry Belding, Albert Belding, George Belding, and the plaintiffs Maria Gaines, heirs of Ludovicus Belding, entered and paid for the southwest quarter of the southwest quarter of section thirty-three, township two south, of range nineteen west, by instruction from the Secretary of the Interior; that they became and were thereby entitled to the possession of

30 said land; that the supreme courts of the State of Arkansas and of the United States held that they were entitled to such possession; that defendant William H. was put in possession of lots one, two, three, four, seventeen, eighteen, nineteen, and twenty, in block eighty-six, and lots ten, eleven, and twelve, in block eighty-seven, and the part of lots twenty-eight, twenty-nine, and thirty lying east of the section line between sections thirty-two and thirty-three, in the Hot Springs reservation, in township two south, of range nineteen west, in the State of Arkansas, by the sheriff of Hot Springs county; that defendant Maria took possession of said lots in 1865; that she fenced them; that plaintiff Elizabeth, in 1865, sought permission of defendants to build on said lots; that she took forcible possession of defendants' premises; that defendants were put in possession of them by virtue of writs; that plaintiffs conspired to violate the alleged writs; that they hauled lumber and posts at night; that they the next morning, when honest and

31 peaceable men were asleep, with a large force, armed in part, took forcible possession of said premises; that it was shown before the Hot Springs commissioners that they took such possession; that J. T. Chidester held lot ten, in block eighty-seven, under a lease from the Belding heirs; that the petitions and proofs showed that the defendants had the legal right of possession of said lots and were entitled to purchase them; that the commissioners in awarding said lots 1, 2, 3, 4, 17, 18, 19, and 20, in block 86; lots 10, 11, and 12, in block 87, and the said parts of lots 28, 29, and 30 to plaintiffs misconstrued the law; that under a correct construction of the law the commissioners should have awarded the right to purchase said lots to defendants; that plaintiffs, to influence the commissioners to make said awards, conspired with D. C. Rugg and A. O. Morgan to defraud defendants and conveyed to said Rugg

32 in secret trust for the benefit of said commissioners and Morgan, and that said commissioners on account thereof awarded said lots to plaintiffs; that plaintiffs set up any such corrupt or fraudulent transaction in a petition to the Interior Department; that plaintiff John J. swore to any such petition; that plaintiffs commenced a suit in chancery in the circuit court of Garland county, Arkansas, to set aside the alleged deed to said Rugg; that they set up the alleged fraudulent transactions; that said Rugg agreed with

plaintiff John J. to reconvey said lots to plaintiffs if he would pack a jury to acquit him; that he agreed to settle with his alleged *cestui que trust.* in the alleged deed with money; that after being acquit-ed he conveyed said lot to plaintiffs, are all false.

Plaintiffs, in further answer to said cross-bill, say that the lots of land mentioned in said cross-bill and those mentioned in the complaint are situated in the Hot Springs reservation, in the
33 State of Arkansas, in section thirty-three, township two south, range nineteen west, one of the four sections reserved from sale for the future use and disposition of the United States by act of Congress of April 2, 1832; that said Ludovicus Belding never had any possession in any part of said section except as tenant of John Perciful and those claiming under him; that neither he, said Perciful, nor any one else ever had any right to enter said land under any law at any time during such tenancy; that the plaintiff William H. Gaines, in the name of said Albert, Henry, George, and plaintiff Maria, applied to enter the southwest quarter of said section, well knowing that it was not subject to entry; that he procured in their names, by representing that a patent would never be demanded, a fraudulent and void paper in the form of a certificate of entry; that this occurred on the 19th day of December, 1851; that the Secretary of the Interior not only did not instruct them to enter said land, but authorized the issuance of said void paper on the express stipulation that the rights of the United States
34 were not to be affected thereby.

And plaintiffs further say that in 1844 James Sumpter, the husband of plaintiff Elizabeth and the father of plaintiffs John and William, entered into possession and occupancy of the land now designated as the lots mentioned in plaintiffs' bill of complaint and in the cross-bill under a purchase from —— Wright, who in 1840 improved it; that there were other lands embraced in the purchase of said James from said Wright, and that from the date thereof to his death, in September, 1861, he resided on and occupied all of said lands; that he built a great many houses upon it and kept it enclosed; that defendants obtained said fraudulent certificate for the purpose of annoying said James and other occupants who had improvements upon said quarter section, of whom there were a great many, and of unconscionably depriving them of their improvements; that in the name of said Albert, Henry, George, and plaintiff Maria suit was instituted in the circuit court of Hot
35 Springs county, in said State, against said James and the other owners of improvements on said quarter section; that said James was stubborn in his determination to resist said suit, and was bold in denouncing the procedure by which said void paper was obtained as fraudulent; that he was a man of considerable influence, and that defendants, to get rid of his opposition and the effect it would have in encouraging others to resist their aggression, proposed to him to adjust the matter by his permitting them to take a formal judgment against him and their permitting him to hold as a nominal tenant, at a nominal rent, until the validity of the said paper or certificate of entry should be finally determined, under the

H. was far enough removed from honesty to be "wide awake," and as to the allegation that plaintiffs made a fraudulent bargain or resorted to any fraudulent practices to influence said commissioners, plaintiffs say that they are false.

They further say that they were often approached and informed that they would have to fee said commissioners indirectly to secure an adjudication of their claim on principles of justice, and

43 that if they did not a portion of their rights would be given to defendants, and they have ever since the awards been convinced that the representations were true. They say that they never desired to have anything that belonged to defendants or that did not belong to them, and that their confidence in the justice of their claim was so unqualified that when they found that said commissioners had awarded part of the land claimed by them to defendants they reduced to writing the principal part of what had been told them of the corrupt purposes of said commissioners and filed it before them with the view of having their awards reviewed, and that the chairman of said commission, instead of forwarding it with the papers and testimony, pocketed it, carried it away, altered it so as to make it reflect as little as possible on the commissioners and make it appear as unfavorable as possible to plaintiffs, and then sent it to the Interior Department, denominating it a "mis-

44 cellaneous paper;" that plaintiffs never filed any petition with the Secretary of the Interior nor in the Department of the Interior, and that the paper exhibited to the cross-bill as such petition is not a copy of the writing prepared and signed by them or the plaintiff John J.

Plaintiffs further say, as to the allegation that plaintiff John J. was to pack a jury for said Rugg, of which he was to reconvey to them, that it is not only false, it is also scandalous, and as such they ask that it be striken out and expunged; and as to the alleged abstraction of papers, plaintiffs say that there was no such suit as that mentioned, and that if there was any abstraction or stealing of papers relating to any of their affairs it is wholly unknown to them, and that they do not believe that any papers which have ever been in court concerning their business have been withdrawn or ab-

45 stracted, unless in the interests of defendants. As to the alleged lease of lot ten, in block eighty-seven, to J. T. Chidester by defendants, they know nothing except what they have heard, and they say that said Chidester obtained possession of said lot by breaking down plaintiffs' enclosure and occupying it against their objections, and that if defendants did lease it to them they were party to the wrong; and they further say that they sued said Chidester in the said circuit court of Hot Springs county for so doing, and that he compromised with them by agreeing to surrender back to them, at the end of four years, said lot, together with a stable which he had built on it, and that they, prior to the 24th of April, 1876, were possessed of said lot and owners of the improvements thereon and have ever since continued so to be.

And plaintiffs further say that they were and still are equitably

entitled to all of the land claimed by them before said com-
46 mission, including the part thereof awarded to defendants William H. and Maria, and that said defendants never had any right, either in law or equity, to any part of said land.

Plaintiffs further say that they always occupied said land and their improvements thereon under claim of right in themselves, as herein stated, and that under act of Congress of 1870, conferring jurisdiction on the Court of Claims to hear and determine all claims to the Hot Springs reservation, in the State of Arkansas, as against the United States, they, plaintiffs, filed their claim to said land under their said occupancy, as did the said defendants and the Belding heirs, claiming said southwest quarter under said pretended certificate of entry, which petition of the plaintiffs they suffered to remain in said court subject to the final action on the other claims; that the said Court of Claims decreed that all the said reservation belonged to the United States, and that the defendants, heirs of Belding,
47 had no title thereto, from which decision the defendants and the heirs of Belding prosecuted an appeal to the Supreme Court of the United States, by which said court the judgment of the Court of Claims was affirmed; that afterwards, on the 24th day of April, 1876, pursuant to the mandate and orders of the Supreme Court of the United States, it was ordered, adjudged, and decreed, in accordance with an act of Congress in that behalf, that A. O. Morgan should be appointed receiver to take charge of all the lands and improvements in said Hot Springs reservation on behalf of the United States, including all of said southwest quarter of section 33 and the lots numbered in the original and cross-bills as part thereof, whereby the said defendants and the heirs of said Belding were ousted and dispossessed of all of said land included in said decree which was occupied or possessed by them or pretended so to be; that the said receiver, pursuant to the said final decree of said Court of Claims, took possession of all of said land and improvements in
48 said reservation and, among them, of the lots mentioned in the original and cross-bills, and the plaintiffs, being then in possession of said lots and the improvements thereon in their own right, ceased to press their said suit against the United States in the Court of Claims, and attorned to said receiver and rented said lots and improvements from him and paid him rent thereon at the rate of $200 per month; the said defendants were at that time residents of Hot Springs; rented other portions of said reservation upon which they owned improvements from said receiver, and they well knew that the plaintiffs owned the improvements on said lots and were occupying the same, and yet they never pretended, as real claimants usually did, to a preference right by renting the said lots from said receiver, and never pretended to claim said lots or improvements thereon or take any steps to protect the interest of the plaintiffs, whom they now pretend to have been their tenants, and
49 never intimated in any manner that they occupied towards the plaintiffs the relation of landlords until after the appointment of the said commission in the manner set forth in said exhibits. Upon the contrary, said William H., who was acting for himself and

as agent for the heirs of Belding, repeatedly declared to these plaintiffs that he set up no claim to these lots.

And plaintiffs say that if there are any material allegations in the cross-bill not specifically denied by *his* answer they are untrue, and they pray that said cross-bill be dismissed, and for other relief.

S. W. WILLIAMS AND
G. W. MURPHY,
Counsel for Defendants.

Filed February 5, 1886. RALPH L. GOODRICH, *Clerk.*

50 UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 12th day of April, anno Domini one thousand eight hundred and eighty-six, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On April 20, 1886:

Comes George G. Latta and states that he is a joint owner with John J. Sumpter in lot No. 10, B. 130, in controversy in this cause, and asks that he may be made party defendant, and that he accepts the answer of Sumpter herein as his answer. Wherefore it is considered, adjudged, and decreed that George G. Latta be made party defendant herein, and that the answer of John J. Sumpter be taken as the answer of the said Geo. G. Latta; which petition is in the words and figures following, to wit:

51 In the United States Circuit Court, Eastern District of Arkansas.

WM. H. GAINES & MARIA GAINES }
v.
D. P. BELDING, JOHN J. SUMPTER. }

Comes George G. Latta and states that he is a joint owner with the defendant John J. Sumpter in lot numbered ten (10), in block numbered one hundred and thirty (130), in controversy in this cause; that the answer filed in this cause shows the said lot and the improvements thereon to be the property of the said Sumpter and Latta.

That said Latta accepts the answer of the said Sumpter as his answer in this cause. Wherefore he asks that he may be made party defendant herein, and that the answer of the said Sumpter may be taken as his answer herein.

GEO. G. LATTA,
Sol. for Self.

Filed April 20, 1886. RALPH L. GOODRICH, *Clerk.*

52 And on the same day as follows:

Come the complainants, by Benjamin & Davies, Esqrs., their solicitors, and come the defendants, by Geo. G. Latta, Esq., their solicitor, and this cause is submitted to the court upon the pleadings and evidence, and by agreement of parties it is ordered that the complainants have fifteen days and the defendants thirty days thereafter in which to file abstracts, and thereafter the complainants to have ten days and the defendants ten days thereafter in which to file briefs, and that five days thereafter be given for reply. It is further ordered that each party serve upon the opposing party copies of abstracts and briefs.

53 UNITED STATES OF AMERICA }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 24th day of October, anno Domini one thousand eight hundred and eighty-seven, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On November 8, 1887:

Now, on this day, this cause coming on to be heard upon the complaint of the plaintiffs, the answer of the defendants, and the replication to said answer and the evidence, and the court having heard the argument of counsel and being now sufficiently advised in the matter as to the proper decree to render herein, the court finds that the board of commissioners mentioned in said complaint, by error and mistake of law, awarded the right to purchase
54 lot ten (10), in block one hundred & thirty (130), of the Hot Springs reservation, in the city of Hot Springs, Garland county, Arkansas, to John J. Sumpter and issued to him, the said John J. Sumpter, a certificate of award, and that in accordance with said erroneous ruling a patent has been issued improperly to said John J. Sumpter for said lot, which lot and patent, by the pleadings and evidence, George G. Latta was a part owner of one-half at the time of the award and at the issuance of the patent and at the present time, and the court is of the opinion that said defendants each hold said patent and lot for the sole use of said William H. Gaines and Maria Gaines. It is therefore considered, ordered, and decreed that all right, title, interest, and estate of each of the said defendants, John J. Sumpter and George G. Latta, in and to said lot be, and the same is hereby, divested out of said defendants and vested in plaintiffs and their heirs and assigns forever;
55 and said defendants pray an appeal, which is by the court granted.

And it is further ordered that this cause be referred to N. W. Cox, Esq., special master of this court, who is directed to ascertain and report to this court at its next term—

1st. The value of the rents of said lot since the said award of said commissioners.

2. The taxes paid since said award.

3. The value of the improvements made upon said lot before and since the award, and report thereon separately.

And said master may examine witnesses touching said matters, and shall reduce the same to writing and report their testimony so taken to this court; and it is further ordered that the plaintiffs do have and recover all the costs of suit herein; and it is further ordered that all questions of law touching the several matters

56 herein referred to the master be, and the same are, reserved until the coming in of his report, and this case is reserved for further directions; and the court finds from the evidence adduced that the lot in controversy is at this date of the value of six thousand dollars; and, upon motion of complainants' solicitors, it is ordered that this cause be dismissed as to D. P. Beldin.

And on March 10, 1888, as follows:

Comes N. W. Cox, master herein, and files his report; which report is in the words and figures following, to wit:

In the U. S. Circuit Court for the Eastern District of Arkansas.

WILLIAM H. GAINES & MARIA GAINES, His Wife,
v.
JOHN J. SUMPTER and GEORGE G. LATTA.

57 To the hon. U. S. circuit court for the eastern district of Arkansas:

In compliance with the decree of this hon. court made herein November 8th, 1887, I have made enquiry into the matters therein directed, and the result is herewith reported. The parties did not present testimony in accordance with the present reading of said decree, but in accordance with the rulings of this hon. court made at its last term in similar causes. The testimony taken in such investigation is hereto attached and made a part of this report.

I find from testimony that the width of said lot 10, block 130, city of Hot Springs, is 24 feet.

That the rent thereon under the lease herein from the date of the award, Dec. 9, 1879, to the date of the filing of the complaint herein, May 23, 1884—4 ys. 5 ms. 14 ds., at $10 per front foot per annum, am'ts to------	$1,069 30
Interest thereon, 6 y. 17 d., @ 6%, to date ------	388 02
58 Rent from date of filing suit to date of decree, 3 y. 5 ms. 15 d., at $10 per front foot per annum---	830 00
Interest on same, 2 y. 9 ms. 15 d., @ 6% ----------	139 03
Rent of lot and improvements from Nov. 8 to M'ch 8, 1888, 4 ms., @ $40----------	160 00
	2,586 35

The defendants are entitled to the following credits:

Am't paid U. S. Government for the lot	192 00
Int. on same, 6⅙ ys., @ 6%	71 04
Taxes for years '82, '3, '5, '6, including city, less discount for scrips	186 00
Interest on same, 3 ys. av.	33 48
Improvement tax, $25 per an., 3 ys.	75 00
Int. on same, 2 yr-.	9 00
Water connections (no proof as to time)	60 00
Grading tax (" " ")	30 00
Value of improvements	1,000 00
	1,656 52
Bal. in favor of pl'ffs	$929 83

Respectfully submitted,

N. W. COX,
Special Master.

59 The depositions of witnesses taken in the above-entitled cause by N. W. Cox, special master, at the office of R. G. Davies, Esq., in the city of Hot Springs, on the 13th day of February, 1888—present, the said plaintiffs, by R. G. Davies, their attorney, and the said defendants, by Geo. G. Latta, Esq., their attorney—said depositions taken under notice by the special master to the defendants.

WM. H. GAINES, being introduced upon the part of the plaintiffs and duly sworn, says to—

Q. 1. State your name, age, and residence, and if you are one of the plaintiffs in this cause.

A. My name is William H. Gaines; residence, ——, and of lawful age. I am one of the plaintiffs in this cause.

Q. 2. What did you lease the lot in controversy at per front foot?

A. Ten dollars per foot.

Q. 3. Has the property increased or decreased in value since that time?

Ans. Increased.

WM. H. GAINES.

60 A. B. GAINES, being introduced upon the part of the plaintiffs and duly sworn, says:

Q. 1. State your name, age, residence, and occupation.

A. My name is A. B. Gaines; age, — years; residence, Hot Springs; occupation, real-estate dealer and agent.

Q. 2. State if you are familiar with the rental value of ground in Hot Springs since the date of the bringing of this suit, May 23, 1884.

A. I am.

Q. 3. What is it per front foot upon lot 10, in block 130, the lot in controversy in this cause, from that date to the date of the decree in this cause, Nov. 8, 1887?

A. Twelve & $\frac{50}{100}$ dollars per front foot.

Q. 4. What is the rental value of the ground with the improvements now and since that time?

A. About forty-five dollars per month.

Let the cross-examination in the Kimball and Latta case be the cross-examination in this case, which is done by consent.

A. B. GAINES.

61 C. N. RIX, being introduced upon the part of the plaintiffs and duly sworn, says to—

Q. 1. State your name, age, residence, and occupation.

A. My name is C. N. Rix; age, 45 years; occupation, banker; residence, Hot Springs.

Q. 2. State if you are familiar with the rental value of ground in Hot Springs since the date of bringing this suit, May 23, 1884.

A. Somewhat so.

Q. 3. What is it per foot upon lot 10, block 130, the lot in controversy in this suit, from that date to the date of the decree in this cause, Nov. 8, 1887?

A. Eighteen to twenty dollars per month.

Q. 4. What is the rental value of the ground with the improvements now and since that time?

A. About forty-five dollars per month.

CHAS. N. RIX.

62 P. J. LEDWIDGE, being introduced upon the part of the plaintiffs and being duly sworn, says to—

Q. 1. State your name, age, residence, and occupation.

A. My name is P. J. Ledwidge; age, 45 years; residence, Hot Springs, Arks.; occupation, contractor and builder.

Q. 2. What is the present value of the improvements upon lot 10, block 130, city of Hot Springs?

A. One thousand dollars.

P. J. LEDWIDGE.

—— VAN PATTEN, being introduced upon the part of the plaintiffs and duly sworn, says to—

Q. 1. State your name, age, residence, and occupation.

A. My name is S. R. Van Patten; age, 33 years; residence, Hot Springs, Arks.; occupation, —.

Q. 2. What is the present value of the improvements upon lot 10, block 130, city of Hot Springs?

A. One thousand dollars.

S. R. VAN PATTEN.

63 UNITED STATES OF AMERICA,
Eastern District of Arkansas.

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 9th day of April, anno Domini one thousand eight hundred and eighty-eight, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On April 19, 1888:

Come the defendants, by Geo. G. Latta, Esq., their solicitor, and file herein their exceptions to report of master; which exceptions are in the words and figures following, to wit:

In the United States Circuit Court for the Eastern District of Arkansas.

WM. H. GAINES & WIFE
v.
JOHN J. SUMPTER & G. G. LATTA.

64 Come John J. Sumpter and Geo. G. Latta and except to the report of N. W. Cox, special master, filed in this cause, and for grounds of exceptions state—

1. That they except to the item of $1,069.30 because the same is excessive and is based upon an instrument that has no validity and is not binding upon the parties to this cause.

2. That they except to the item of $388.03 because if said item were correct upon which interest is calculated the calculation of interest as to time is not correct.

3. That they except to the item of $830.00 because the same is not borne out by the testimony; that preponderance of the evidence taken before the master shows that the ground rent was not worth ten dollars per front foot, as this lot in controversy is a lot having a depth of only fifty feet.

4. They except to the item of $139.03 as being interest on the same.

5. That they except to the item of $160.00 because the
65 same is not borne out by the testimony before the master. The rent of lot and improvements from November 8th, 1887, is fixed at forty dollars per month. The testimony shows this property never at any time rented for more than forty dollars per month, and out of that the expenses of keeping up the same and keeping the property in repair had to be borne, and it is not right and proper that defendants should be made to pay the gross receipts when they have not realized nearly that amount or had the benefit of the same.

6. The master has failed to give a credit to the defendants for $54.00, the amount paid out on this lot for sidewalks and the rock foundations for the same, as shown by the testimony of Latta, on

page 1, in No. 641, and was to be the testimony in this case. This item of credit the master has overlooked and failed to place
66 to the credit of defendants, and defendants ask that their exceptions be considered, and that the master's report be corrected in the several items and particulars as above set forth.

GEO. G. LATTA,
Att'y for Def'ts.

Filed April 19, 1888.

RALPH L. GOODRICH, *Clerk.*

67 And on April 21, 1888, as follows:

Come the complainants, by M. W. Benjamin, Esq., their solicitor, and comes the defendant, by George G. Latta, Esq., his attorney, and file herein their agreement as to testimony; which agreement is in the words and figures following, to wit:

In the United States Circuit Court, Eastern District of Arkansas.

WM. H. & MARIA GAINES
v.
JOHN J. SUMPTER *et al.*

It is agreed by and between the plaintiffs and the defendants that the testimony taken in the cases of, No. 632, Wm. H. Gaines & Wife *v.* P. Helfrich; No. 633, Wm. H. Gaines & Wife *v.* B. Schicker; No. 639, Wm. H. Gaines & Wife *v.* Charlotte Cohn; No. 651, Wm. H.
68 Gaines & Wife *v.* Morris Moscowitz, James A. Smith, and Jennie Smith; No. 658, Wm. H. Gaines & Wife *v.* Farmer & Scoggin, all of said cases being in this court, shall be taken and considered as the testimony in this case, and this agreement is made for the purpose of allowing and securing to plaintiffs and defendants the benefit of said testimony in this court and on appeal to the Supreme Court of the United States.

M. W. BENJAMIN,
Of Counsel for Plaintiffs.
GEO. G. LATTA,
Att'y for Def'ts.

Filed April 1, 1888.

RALPH L. GOODRICH, *Clerk.*

69 And on April 21, 1888, as follows:

Now, on this day, comes the said plaintiffs, by their solicitors, M. W. Benjamin and R. G. Davies and U. M. & G. B. Rose, Esqrs., and also comes the said defendants, John J. Sumpter and George G. Latta, by George G. Latta, Esq., *his* solicitor; and the special master having heretofore filed his report herein, and this case now coming on for hearing, and the court having heard the argument of counsel and being now sufficiently advised as to the

further decree to render herein, it is ordered, adjudged, and decreed that all the exceptions of the defendant- to the master's report be, and the same are, overruled; to which ruling defendants excepted; and thereupon the court finds and states the account between the plaintiffs and defendant- as follows:

To amount due said plaintiffs for rent according to the terms of the lease, from the date of award to the date of the filing of the bill in this case, and interest, $1,457.32.

70 To amount due him since said date and until the filing of the master's report, rental value of the property and interest, $969.03.

To amount of rent to date of decree, amounting in the aggregate to the sum of $160.00.

By amount due the defendant for taxes paid and interest, $247.48.

By amount of purchase-money paid by him to Government for said lot and interest, $263.04.

By present value of the improvements, $1,000, which said sums amount in the aggregate to $2,586.35 for plaintiff-, from which take $1,710.52 for defendant, as above, leaves the sum of $875.83, which the court finds to be the balance now due the plaintiffs, for which plaintiffs shall have execution, together with costs of this suit.

And it is further ordered and decreed that the said plaintiffs have and recover from said defendants the possession of said lot ten (10), in block one hundred and thirty (130), city of Hot Springs, Ar-

71 kansas, and that a writ of possession issue, and serving a copy of this decree shall be the writ. it is further ordered that N. W. Cox be allowed the sum of one hundred dollars for his services as special master herein.

And the defendant prays an appeal to the Supreme Court, which is granted; and it is ordered that upon his executing and filing a bond, within the time and conditioned as prescribed by law, in the sum of three thousand dollars (3,000), and cost bond for two hundred and fifty — (250), with good, approved security, the decree be superseded pending said appeal.

And on June 1, 1888, as follows:

Comes the defendant and files herein his supersedeas bond in the sum of three thousand dollars and cost bond in the sum of two hundred & fifty dollars, both of which bonds are examined by the court and approved as sufficient; which bonds are as follows:

72 In the United States Circuit Court.

WM. H. GAINES & WIFE
v.
JOHN J. SUMPTER *et al.*

Know all men by these presents that we, John J. Sumpter, George G. Latta, and William Sumpter, are held and firmly bound unto

Wm. H. and Maria Gaines in the sum of $250, to be paid to the said Wm. H. and Maria Gaines, their executors and administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals this 29th day of May, A. D. 1888.

Whereas the above-named John J. Sumpter and George G. Latta have prayed an appeal to the Supreme Court of the United States from a decree rendered in the above-entitled cause by the circuit court of the United States for the eastern district of Arkansas against them in favor of Wm. H. and Maria Gaines:

73

Now, therefore, the condition of this obligation is such that if the above-named John J. Sumpter and George G. Latta shall prosecute their appeal to effect and answer — if they shall fail to make their appeal good, then this obligation shall be void; otherwise to remain in full force and effect.

JOHN J. SUMPTER.
GEO. G. LATTA.
WM. SUMPTER.

William Sumpter, being duly sworn, deposes and says he is worth the sum of $250 over and above all of his just debts and liabilities and legal exemptions.

[SEAL.]

CHAS. N. RIX,
Notary Public.

Filed and approved June 1, 1888.

HENRY C. CALDWELL, *Judge.*

Filed June 1, 1888.

RALPH L. GOODRICH, *Clerk.*

74

In the United States Circuit Court.

WM. H. GAINES and WIFE
v.
JOHN J. SUMPTER *et al.*

Know all men by these presents that we, John J. Sumpter, George G. Latta, and William Sumpter, are held and firmly bound unto Wm. H. and Maria Gaines in the sum of $3,000, to be paid to the said Wm. H. and Maria Gaines, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 29th day of May, A. D. 1888.

Whereas the above-named John J. Sumpter and George G. Latta have prayed an appeal to the Supreme Court of the United States

from a decree rendered in the above-entitled action by the
75 circuit court of the United States for the eastern district of Arkansas, divesting them of the title to lot ten, block one hundred and thirty, in the Hot Springs reservation, in Arkansas, and vesting it in Wm. H. and Maria Gaines and adjudging and decreeing them to pay them the sum of $875.00 and costs of this suit, but permitting them to supersede the judgment for said sum of money upon giving bond in the sum of $3,000, together with a cost bond, which cost bond has been given and will be filed at the same time with this:

Now, therefore, the condition of this obligation is such that if the above-named John J. Sumpter and George G. Latta shall prosecute their said appeal to effect and answer all damages which may arise from the superseding of said judgment for said sum of money and all costs if they shall fail to make their appeal good, then this obligation shall be void; otherwise to remain in full force and virtue.

76–251 JOHN J. SUMPTER.
GEORGE G. LATTA.
WILLIAM SUMPTER.

William Sumpter, being duly sworn, deposes and says he is worth the sum of $3,000 over and above all of his just debts, liabilities, and legal exemptions.

[SEAL.] CHAS. N. RIX,
Notary Public.

Filed and approved June 1, 1888.
HENRY C. CALDWELL, *Judge.*

Filed June 1, 1888.
RALPH L. GOODRICH, *Clerk.*

* * * * * * *

252 WM. H. GAINES and MARIA GAINES
vs.
CHARLOTTE COHN and HENRY COHN.

It is agreed that the deposition of C. B. Frost may be taken by the defendants before any notary public or court of record, without dedimus, notice, or other formality, upon the following interrogatories and cross-interrogatories, and that it may be read in evidence by them upon the hearing of this cause, subject to exceptions for irrelevancy and incompetency.

G. W. MURPHY,
For Defendants.
R. G. DAVIES,
Att'y for Plaintiffs.

Interrogatory 1. State your name, age, residence, and occupation.
Interrogatory 2. Do you know the plaintiff Wm. H. Gaines?
Interrogatory 3. Do you know the defendants, Henry Cohn and Charlotte Cohn?

Interrogatory 4. Where did you reside in the years 1879 and 1880?

Interrogatory 5. Did you in either of these years hear any conversation between the plaintiff Wm. H. Gaines and the defendant or either of them in reference to the settlement of any lawsuit or matter of dispute between them? If you did, state when and where it occurred, what was said between them, and all you know about it, particularly.

Interrogatory 6. If you have stated that you heard a conversation between them—that is, between plaintiff Wm. H. Gaines and the defendants or one of them—with reference to the settlement of a dispute or suit between them with reference to land or the rent of
253 land, describe or designate land by giving its location, number, or any other circumstances within your knowledge.

G. W. MURPHY,
For Defendants.

Cross:

1. Have you received any letter or letters from Henry Cohn in regard to the matters above which you have testified, or *for* any one acting for him or Charlotte Cohn? If so, attach all such letters to your deposition in this case.

2. What business were you in in Hot Springs, Ark., in 1879 and 1880 or in whose employment?

3. Who is present at the taking of these depositions?

4. State particularly all the exact language used by Gaines or Cohn in reference to this matter you have testified about.

5. Are you not friendly to Cohn in this matter and unfriendly towards Gaines?

R. G. DAVIES.

STATE OF LOUISIANA, }
City of New Orleans. }

Deposition of Charles B. Frost, a resident of said city of New Orleans, taken on the 23rd day of October, A. D. 1885, before the undersigned (Andrew Hero, Jr.), a duly commissioned and qualified notary public in and for the parish of Orleans, State of Louisiana, and authorized to administer oaths and to take and certify depositions, *and* at my office, No. 17 Commercial place, in the city of New Orleans, State of Louisiana, between the hours of 9 o'clock a. m. and 5 o'clock p. m., upon the annexed interrogatories and cross-interrogatories, and, upon the written consent and agree-
254 ment of counsel, to be read or used as evidence on behalf of defendants in a certain cause, now pending and undetermined in the circuit court of the United States for the eastern district of Arkansas, between Wm. H. Gaines and Maria Gaines, plaintiffs, and Charlotte Cohn and Henry Cohn as defendants.

Said witness, CHARLES B. FROST, being to me produced as aforesaid and having been by me first duly and solemnly sworn to tes-

tify the truth, the whole truth, and nothing but the truth in regard to the matters in controversy aforesaid, deposed as follows:

1st Interrogatory. State your name, age, residence, and occupation.

Ans. Charles B. Frost; aged fifty-four years; a resident of New Orleans, Louisiana; by occupation, engaged in the hotel and restaurant business.

2nd Int. Do you know the plaintiff Wm. H. Gaines?

Ans. I do.

3rd Int. Do you know the defendants, Henry Cohn and Charlotte Cohn?

Ans. I do.

4th Int. Where did you reside in the years 1879 and 1880?

Ans. Up to December 25th, 1879, I was living at Brownsville, Texas, and thereafter, until about October, 1880, I lived at Hot Springs, Arkansas, and then I moved to Little Rock, Arkansas.

Int. 5. Did you in either of these years hear any conversations between the plaintiff William H. Gaines and the defendants of either of them in reference to the settlement of any landsuit or matter of dispute between them? If you did, state when and
255 where it occurred, what was said between them, and all you know about it particularly.

Ans. I did hear them conversing in April or May, 1880, at Cohn's news-stand, which was in the front part of my restaurant, on Central avenue, of the favorable award that had been made to Cohn of the property whereon the restaurant and news-stand was conducted, but details and particulars of the conversation I do not recollect.

Int. 6. If you have stated that you heard a conversation between them—that is, the plaintiff Wm. H. Gaines and the defendants or one of them—with reference to the settlement of a dispute or suit between them with reference to land or the rent of the land, describe or designate the land by giving its location, number, or any other circumstances within your knowledge.

Ans. I only know that the property was that whereon I kept a restaurant in 1880, at Hot Springs, Arkansas, near the then Malvern crossing, but now said crossing is a block further down.

1st Cross-int. Have you received any letter or letters from Henry Cohn in regard to the matters above which you have testified or for any one acting for him and Charlotte Cohn? If so, attach all such letters to your deposition in this case.

Ans. I did from H. Cohn once, but have not the letter.

2nd Cross-int. What business were you in at Hot Springs, Arkansas, in 1879 and 1880, or in what employment?

Ans. I was in 1880 keeping this restaurant spoken of.

256 3rd Cross-int. Who is present at the taking of these depositions?

Ans. Myself and the notary and his clerk.

4th Cross-int. State particularly all the exact language used by Gaines or Cohn in reference to this matter you have testified about.

Ans. I cannot recall it trying.

5th Cross-int. Are you more friendly to Cohn in this matter and unfriendly towards Gaines?

Ans. I am friendly to either.

C. B. FROST.

Deposition of John Neff.

Inter. 1. State your name, age, residence, and occupation.

Ans. John Neff; 58 years of age; Marshall, Texas; saloon-keeper.

Int. 2nd. Do you know the plaintiff Wm. H. Gaines?

Answer. Yes.

Int. 3rd. Do you know the defendants, Henry Cohn and Charlotte Cohn?

Ans. Yes.

Int. 4th. Where did you reside in the years 1879 and 1880?

Ans. In Hot Springs, Arkansas.

Int. 5th. Did you in either of those years hear any conversation between the plaintiff Wm. H. Gaines and the defendants or either of them in reference to the settlement of any lawsuit or matter of dispute between them? If you did, state when and where it occurred, what was said between them, and all you know about it particularly.

257 Ans. I heard such a conversation. I am not positive about the year, but think it was in the summer of 1879, in Henry Cohn's store, in Hot Springs, Arkansas, as near as I can recollect. William Gaines stepped into the store of Henry Cohn and asked Cohn something about a settlement which Gaines wished to make with Cohn in reference to some money or back rents, which I understood, between them, was coming to Major Gaines. Cohn at first stated he did not know what he, Gaines, meant. Then Gaines stated what it was, as far as I can recollect. Cohn said that he, Cohn, had no money and could not settle, meaning at that particular time. Gaines then said that the United States had given him the lot and improvements or houses—do not know which language was used to the defendant Cohn—meaning the lot and improvements where the Cohn house on Main street stood then, and Gaines then said that he was not particular about the money, but wanted Cohn to confess judgment for the amount and have the same entered on the docket of the court, and that he, Gaines, would have it so fixed in court that he, Cohn, should hereafter remain in peaceable possession of the property, and that he, Gaines, would not thereafter have any claim and right against the property of H. Cohn and wife, meaning, as far as I understood, that Gaines relinquished all right, title, and claim to the Cohn house in the city of Hot Springs. Cohn said that he, Cohn, would agree to that proposition. The above is all that I can now recollect about the matters.

258 Int. 6th. If you have stated that you heard a conversation between them—that *it* is, between plaintiff Wm. H. Gaines and the defendants or one of them—with reference to the settlement of a dispute or suit between them with reference to land or the rent

of land, describe or designate that land by giving its location, number, or any other circumstance within your knowledge.

Answer. The land or house and lot was situated on Main street, in Hot Springs, Arkansas, and was known as the Cohn house; do not know the number of the same.

Cross-examination:

Cross-int. 1st. Have you received any letter or letters from Henry Cohn in regard to the matter about which you have testified or from any one acting for him or Charlotte Cohn? If so, attach all such letters to your deposition in this case.

Ans. I received a letter from Henry Cohn some time since telling me that he would probably need my testimony. I looked for the letter this morning, but could not find it, and I think I destroyed it, as it was of no value to me. In the letter he told me that he would send me the interrogatories to answer in the case, and I received the interrogatories on the 21st.

Cross-interrogatory 2nd. What business were you in in Hot Springs, Ark., in 1879 and '80, or in whose employment?

Ans. I was in Hot Springs in 1879 and '80 for my health, and was not in the employment of any one at all.

259 Cross-int. 3rd. Who is present at the taking of these depositions?

Answer. Myself and John B. Clark, the notary public.

Cross-int. 4th. State particularly all the exact language used by Gaines or Cohn in reference to the matter you have testified about.

Ans. As near as I can recollect, I have given the same in answer to direct interrogatory No. 5.

Cross-int. 5th. Are you not friendly to Cohn in this matter and unfriendly towards Gaines?

Ans. I am just as friendly towards Gaines as I am to Cohn; no difference in my feeling to either of them.

JOHN NEFF.

Deposition of H. Cohn.

Q. State your name, age, and occupation and residence.

A. My name is H. Cohn; my age, 41 years; my occupation a merchant; my residence in Hot Springs, Ark.

Q. Are you one of the defendants in this case?

A. I am.

Q. In the testimony taken before the Hot Springs Commission in these cases I find the name J. H. Cohn mentioned frequently. Is that name correct, or what should it be?

A. It should be R. H. Cohn.

Q. There is a copy of a judgment of the Garland circuit court attached to your answer in this case in favor of the plaintiff Wm. Gaines for a sum of money, about $150, and in favor of yourself or yourself and Charlotte Cohn for the possession of some land. What land is that?

260 A. It is lot 7, in block 130.

(Objected to by attorney for plaintiff, M. W. Benjamin, because the judgment and records and pleadings in the case will show what there is in it.)

Here, at the request of the attorney for plaintiff, he was permitted to ask the witness the following questions:

Q. What relation is Charlotte Cohn to you?

A. She is my wife.

Q. Is she the owner of the property in controversy?

A. Yes, sir.

(Objected to by the attorney for plaintiff, M. W. Benjamin, because the witness is an incompetent witness; that he cannot testify for or against his wife.)

Q. What other land, if any, did you or Charlotte Cohn ever hold as tenants of the plaintiff- or either of them?

A. No other land.

Q. Was that the same or different land from that that Charlotte Cohn applied for before the Hot Springs Commission?

A. It is the same.

Q. In what year and what month was the suit brought, if you remember?

Objected to by attorney for plaintiff, M. W. Benjamin, because the records will show.

A. I think it was in the year 1875 or 1876.

Q. Was that before or after the land of the Hot Springs reservation was laid out in lots and blocks and numbered?

A. Before.

261 Q. I wish you would tell in your own way how the judgment came to be rendered in that way for money in favor of the plaintiff Wm. H. Gaines and for you or you and your wife for the possession of the land. State all that was said, if anything, between you and him or you and his attorney for him in reference to the matter.

Objected to by attorney for plaintiff, M. W. Benjamin, because it is incompetent.

A. I think it was in the summer of 1880 Wm. H. Gaines came to my place of business and asked me, Can't we settle our lawsuit or disputes that the commissioners have awarded you the land and improvements? I asked him what lawsuit that he meant. He said the lawsuit for back rents. I told him that I was not able then to settle. He said that would not make no difference, to let him take a judgment for the rent and he would let me take a judgment for the land and houses, which he will certify on the record. I said, All right, I will agree to it.

Q. Do you know whether the Garland circuit court was in session then or not?

A. I think, to the best of my recollection, that the court was in session then.

Q. Were you acting for yourself then; and, if not, for whom and how were you acting?

A. I was acting for my wife.

Q. In what capacity were you acting for her?

A. I was acting as her agent.

Q. In reference to this lot, has she always managed it in person or through some one else?

262 A. Always through me.

Q. What demand, if any, for that land did the plaintiffs after that and before this suit make of you or your wife?

A. None.

Q. What suits did the plaintiff Wm. H. have against you or you and your wife at the time of the conversation?

A. Had suits for ground rent.

Q. How many suits did he have against you?

A. Only one suit.

Q. Was that suit for ground rent or was it a suit for the possession of land or was it for both?

Objected to by attorney for plaintiff, M. W. Benjamin, because the records will show, and that is the best evidence.

A. I think it was for both, as far as I can recollect.

Cross-examination by R. G. DAVIES:

Q. Are you the Henry Cohn who was defendant in the case No. 199,677, and 234, in Garland circuit court, in which Wm. H. Gaines was plaintiff and Henry and Charlotte Cohn were defendants?

A. I was the defendant in some of those cases.

Q. Did you not in the trial of one or the other of these cases swear or make affidavit that the judgment for $150, of which you speak in your direct examination, was for money only, and that you made no agreement whatever with reference to the property in controversy so far as said judgment was concerned?

263 A. I can't tell now unless I could see the papers.

Q. Did you not say and swear at said time and place that you never authorized your attorney, J. B. Wood, to make any agreement in regard to said judgment, except to confess a judgment for $150?

A. I don't know.

Q. Was not the agreement to confess a judgment made between R. G. Davies, as the attorney of Wm. H. Gaines, and J. B. Wood, as your attorney, and not by you personally?

A. I do not remember now; it has been so long.

Q. Have you not recently examined the papers in said cases—before you came here to testify?

A. I think I did.

Q. Did you see any affidavits made by yourself and others among the papers?

A. I could tell if I looked for any affidavits.

Q. Do you claim now that Gaines relinquished to you whatever

interest he had in the property in controversy in consideration of your confessing a judgment for $150?

A. That was my understanding with Gaines.

Q. Was that the amount that you were to pay Gaines for the relinquishment of all claims against the property?

A. I think that was the amount, or it was $150 or $51. I don't remember.

Q. Was this $150 the purchase price you were to pay Gaines for his interest in the property?

A. I don't think that there was anything said about any interest in the property.

264 Q. What was the $150 for?

A. The $150 was that if I confess judgment that Major Gaines would confess judgment for the land and improvements now in controversy to be made in my favor.

Q. Did you owe Gaines $150 as rent for the property up to the time that the receiver took possession?

A. I can't know up to what time; I could not tell exactly.

Q. Was the receiver in possession at the time that Gaines brought suit against you of unlawful detainer for the possession of the property and the rents due him?

A. I don't remember.

Q. Was he at the time the judgment was rendered?

A. I don't remember.

Q. Did you lease the property in controversy from the receiver?

A. I can't tell now; some of us had leases and some did not. I paid him rent.

Q. Was that for the property in controversy?

A. Yes.

Cross-examination:

Q. Were you present at any conversation between Mr. Davies, as the attorney for Gaines, and J. B. Wood about the judgment to be rendered?

A. I think I was.

Q. Was that before or after you and Gaines had made the agreement?

A. It was after.

Recross-examination:

265 Q. What was said at the conversation between Wood and Davies?

Objected to by attorney for defendant.

A. I don't remember what conversation Mr. Davies and Mr. Wood had.

H. COHN.

Deposition — W. P. Walsh.

Q. State your name, age, residence, and occupation.

A. My name is William P. Walsh; reside in the city of Hot

Springs, Arkansas; my age is forty years; at present, mayor of Hot Springs, and in the year of 1875 was postmaster of Hot Springs, Arkansas.

Q. State if you at any time, with other citizens on the Hot Springs reservation, in the State of Arkansas, got up a petition of citizens to present to the Congress of the United States to pass a law allowing said citizens and petitioners to acquire title to their claims on said reservation.

A. Yes; in the year 1875 I made a contract with Geo. M. French and E. A. Douglass, as surveyors and civil engineers, to make a survey and map of Hot Springs reservation, giving the topography of the same, showing by metes and bounds, as nearly as may be, the land occupied on said reservation by squatters, claimants, and occupants, who had improvements on it.

Q. State if said petition was placed before Congress and the map you refer to or their land committee.

266 Answer. The petition referred to above was signed by at least eight hundred persons, not including the three old claimants. Most of these petitioners who signed the petition were personally known to me as *bona fide* settlers on said reservation. My reason of acquiring of said knowledge was that I was postmaster at the time said petition was signed. The said petitioners asked Congress to pass some law granting them severally the right to purchase the lots or parcels of ground upon which they had made improvements, and to settle the vexed question of title. The petition referred to herein was sent to the Senate Committee on Public Lands at Washington, together with the map as compiled by said French and Douglass. Senator Dorsey and other members of the Arkansas delegation then in Congress suggested the making of said map to show that there were more than three persons who claimed property on the Hot Springs reservation, and the map was paid for by the petitioners in proportion to their claims. I know said petition and map reached Washington and was presented before the committee in both houses on public lands. I received letters in regard to it and talked with members of the Arkansas delegation, and was there myself at the request of the citizens and petitioners and occupants, and talked to the Senate Committee on Public Lands, also House committee and Secretary of the Interior, and remained there

267 as representative of said petitioners, until the bill of March 3rd, 1877, passed and became a law.

Ques. Were there any further petitions after the one you first refer to prepared and sent to Congress asking for further legislation? If so, state what it was.

Ans. Yes; on the 12th day of January, 1880, a petition was prepared, a copy of which I have attached and made it "Exhibit P" and attached to the deposition in the case of Wm. H. Gaines and Maria Gaines against Philip A. Helfrich, and which exhibit I make a part of this deposition. This petition was sent to Congress or the original copy thereof to Jordan C. Cravens, a member of Congress, and was printed by order of the Senate Committee on Public Lands. Joseph McDonald, of Indiana, was presiding when the order was

made. I presented the petition to the committee and represented the petitioners before said committees, and the result was that the prayer of the petitioners was granted by the passage of the act of Congress approved June the 16th, 1880, known as the act for the establishment of titles in Hot Springs and other purposes. By examination of the petition of January 12th, 1880, it shows that it was signed by the heirs of some of the three old claimants, to wit, A. S. Woodcock, claim No. 98, husband of Loretta Hale; Samuel H. Stitt, son-in-law of W. H. Gaines, claim No. 540; also 880 and various other claims; Albert Belding, one of the old Belding heirs and
268 brother-in-law of W. H. Gaines; Loretta Hale, one of the Hale claimants, No. 606 and 790; Augusta L. Stitt, daughter of W. H. Gaines, claim No. 670 and 671; also Fanny G. Williamson, daughter of W. H. Gaines, claim No. 643; C. S. Williamson, son-in-law of W. H. Gaines, claim- No. 640 and 672, and A. B. Gaines, son of W. H. Gaines, claim- No. 640, 801, and 803; George Belding, claim No. 386. These parties who signed this petition protested against the reopening of the Hot Springs cases and desired the decision of the Hot Springs Commission to stand, as is shown by said petition so signed. The signatures of said petitioners was acknowledged by G. W. Baxter, a notary public, as can be seen by reference to page 12 of said petition, a copy of which petition is attached to my deposition in the case of Wm. H. Gaines and Maria Gaines against Philip A. Helfrich and marked as Exhibit "Q," and I refer to it and I make it a part of my deposition in this case.

Ques. State, if you know, whether there was any parties in Washington when you represented the petitioners, in 1880, representing Wm. H. Gaines to have the awards of the commission to stand as made; if so, state who they were.

Ans. Yes. I know that W. W. Wilshire and Gen. Denver, of Washington, D. C., were employed by Albert Gaines, a son of W. H. Gaines, to appear before the respective Committees on Public
269 Lands of the Senate and House to prevent the opening of the Hot Springs question through any legislation. I was allowed an hour to address the House committee for the petitioners. I divided my time by giving Wilshire and Denver one-half of it, as they were co-operating with me and in the interest of the petitioners. These gentlemen also appeared before the Senate Committee on Public Lands and urged that the awards and adjudications as made by the commission be not disturbed.

(Objected to by counsel for plaintiff.)

W. P. WALSH.

Deposition of Dr. Geo. H. Smith.

Ques. State your name, age, and residence.

Ans. My name is George H. Smith; my age, 45 years, and my residence is Hot Springs, Arkansas.

Q. Are you one of the defendants in this action?

A. I am.

Q. At what time did you purchase from the Kublers the lot in controversy?

A. September the 12th, 1876.

Q. At the time of said purchase had the Supreme Court of the United States rendered its decision declaring that neither Gaines, Rector, or Hale had title to the Hot Springs quarter section?

A. Yes; the court had so decided.

Q. At the time you had purchased from the Kublers, state if you know whether the Kublers had attorned to the United States and recognized it as their landlord.

A. Yes; when I purchased the said improvements Mr.
270 John Kubler was renting twenty feet front of said property; Godfry Kubler was renting ten feet front from the United States receiver. Before I purchased from the Kublers I made enquiry from the United States receiver if he would transfer to me the lease of said property. He said he would if the rent was paid up to date. Before the completion of the purchase the Kublers and myself went to the receiver and made settlement until the 1st day of October, 1876, for rent.

Ques. At the time of making the purchase from the Kublers had the Congress of the United States passed any act looking to a disposition of the Hot Springs quarter section?

Ans. No; they had not.

Q. After you purchased from the Kublers, state whether or not you recognized the United States as your landlord. If so, in what manner?

Ans. Yes; I did recognize the United States as landlord by taking out a lease for said property for one year, I think, and paying the rent on it.

Ques. Did you go into the possession of the property you purchased from the Kublers under the lease between Kubler and Gaines?

Ans. No; I did not.

Ques. Did you see or know of the Kubler's lease with Gaines when you purchased?

Ans. I never saw the Kubler lease before I purchased. It was
271 not a question or thought of at that time, as the Supreme Court had decided the property belonged to the United States and that all former leases had ceased to exist.

Q. State if you ever saw the lease between Kubler and Gaines If so, when?

A. I saw a lease, which was filed by the plaintiff before the Hot Springs Commission, purporting to be a lease between Gaines and Kubler.

Q. Is it not provided in said lease it should be for the term of three years or until the title to the Hot Springs quarter section is settled?

A. Yes; I believe it is so provided.

Q. At the time you went into the possession of the property in dispute did Gaines or the Belding heirs claim to own or have an interest in the property in controversy?

A. No; they did not.

Q. Had the Belding heirs or the plaintiffs ever at any time before the commencement of this suit claimed to own the property in controversy or demanded rent of you for the same?

A. No; they did not then claim the property nor demand of me rent of any kind. I believe they made claim before the commission for all the quarter section or a considerable portion thereof, but no special claim for the lot in controversy, based upon the ground that they were entitled to the same by reason of improvements made thereon. Outside of this, I have never heard of any claim

272 being made by them.

Q. Who has paid the tax on the property since April the 4th, 1876?

A. I have paid all the taxes assessed against the said property.

Q. Are the buildings now on the said lot the same as those when you purchased from Kubler? If not, state what became of those erected by the Kublers.

A. They were all destroyed by fire, I think, on March 5th, 1878, and, after their destruction by the fire, I erected the present improvements or buildings.

Q. By what authority did you rebuild?

A. I erected the present buildings by permission of the United States commissioners.

Q. When did you rebuild, and was the plaintiff Gaines in the city of Hot Springs?

A. Yes, sir; I believe he was. I believe he passed the house almost daily while I was rebuilding.

Q. What, if anything, did Gaines say to you about rebuilding?

A. He never said a word to me about it or made any objection against my rebuilding.

Q. Is lot No. 2, in block 77, as it is now known on the plats, composed entirely of the land which you purchased from the Kublers and described in the lease between John Kubler and Gaines; if not, where does it differ?

273 Ans. No; the land is not identical. The present lot is 32 & $\frac{2}{10}$ front and 90 feet deep. The lease filed before the commissioners calls for 20 feet front and back to the Sumpter fence; for the other 12 feet front and back to the Sumpter fence there was no lease at all.

Q. How much of the land leased by John Kubler from Gaines is now in the lot in controversy?

Ans. Twenty feet front and back to where the Sumpter fence was when the lease was made.

Q. How much of the lot in controversy is west of where the Sumpter fence was?

A. To the best of my knowledge and from information received, there is about sixty feet in depth and about 32 & $\frac{2}{10}$ feet in width.

Q. What did the improvements on said lot cost you, as they now stand, as well as those which were destroyed by fire?

A. The first ones on the lot which were destroyed by fire cost

about $1,000, and the present improvements on the lot cost about $2,500.

Q. Who has been in the actual possession of said lot since October 1st, 1876, down to present time?

A. I have been in possession of the lot constantly since that up to the present time.

Q. Has that possession been open, notorious, continuous, and adverse to the plaintiffs, the Belding heirs, and the rest of mankind?

Ans. Yes; it has.

274 Q. Has the plaintiff at any time within seven years prior to the 23rd day of May, 1884, commenced any suit at law or in equity against you to obtain possession or obtain title to the lot in controversy?

A. No, sir; they have not.

No cross-examination.

G. H. SMITH.

Deposition — John J. Sumpter.

Q. State your name, age, and residence.

A. My name is John J. Sumpter; my age is 43 years, and residence in Hot Springs, Ark's, and have resided there since 1844.

Q. Are you acquainted with the lot of land now known as No. 2, in block No. 77, in Hot Springs, Arkansas?

A. Yes, sir; I know it.

Q. Do you know where the line of the Sumpter fence was in the year 1874?

A. I think I know where the location was. I helped to rebuild in 1870 and 1874 and kept it up all the time.

Q. Do you know the present depth of said lot? If so, state it.

A. I know, and it is 90 feet.

Q. How much of said lot now lies west of where the Sumpter fence was when you had it rebuilt?

A. There is 55 or 60 feet depth by 32 feet in width.

275 Q. Has the plaintiff ever at any time since 1845 possessed, improved, or occupied any portion of that portion of lot 2 lying west of the Sumpter fence?

A. He did not, and if he had I would have known it.

Q. Who was in possession of that portion of said lot from 1845 down to the time when the receiver took possession for the United States, and how long has that possession continued?

Ans. From my earliest recollection my father was in possession until his death, in September, 1861. My mother then continued in possession until July, 1864, when the building was destroyed by fire, and she then went to Arkadelphia, Ark's, and remained there until the fall of the year 1865, when she, together with myself and brother, returned and went onto the property. It was vacant when we returned, and we continued in possession until the receiver took possession. After the receiver took possession we applied to him to rent the same, and we paid him five months' rent on it during all of which time and up to the time of the award of the commission.

I know as a matter of fact Gaines did not apply to rent any portion of that property and did not claim it.

Q. Was that possession open, notorious, and adverse to the Belding heirs?

Ans. It was.

276 Q. State whether at any time after the award by the commissioners you had any conversation or conversations with Gaines, the plaintiff, in relation to the awards made by it; and, if so, what he said.

A. He expressed himself as satisfied with the awards and was opposed to having them interfered with.

Q. Did you make any attempt to induce Congress to pass a law to designate a tribunal to supervise the action of the commission in making its awards on the application of parties dissatisfied with the awards? If so, state, if you know, whether Gaines, the plaintiff, favored or was opposed to the passage of such an act.

A. I went to Washington to induce Congress to pass such an act. A bill was prepared providing that certiorari might be had from the commission to the Court of Claims, and that persons dissatisfied could avail themselves of that remedy. The bill passed the House and went to the Senate, where the provision providing for certiorari was stricken out, and the rest of the bill, my impression is, passed the Senate, and the House concurred in the bill as passed by the Senate. I know that Albert Gaines was there at Washington as the agent of the plaintiff and approved the passage of the act

277 in so far as it provided a remedy by certiorari, and I also know that Judge Wilshire was employed by said Gaines to prevent Congress from passing the bill with the certiorari provision in it. My impression is that I had a conversation with the plaintiff before I went to Washington, and that he tried to dissuade me from making any effort to disturb the awards made by the Hot Springs Commission.

No cross-examination.

JOHN J. SUMPTER.

Deposition — Wm. H. Gaines.

Ques. State your name, age, and residence.

Ans. My name is Wm. H. Gaines; my age is 88 years, and my residence is Hot Springs, Arkansas.

Ques. Are you the plaintiff in this action?

Ans. I am.

Q. Did you at any time execute a lease to John Kubler for a piece of land, a portion of which is now known as lot 2, in block 77, in Hot Springs?

Ans. Yes; I leased a lot to him.

Q. Do you recollect the dimensions of the lot you leased to him?

Ans. I think I gave him two leases—the first one 20 feet; and afterwards I leased him another 10 or 12 feet, I think. I am not positive of the depth, but I think it was back to the Sumpter fence. It was to go to the Sumpter line.

Q. At the time of making the lease to Kubler to the lot in
278 controversy, did you not know that the judgment which you had obtained in the action of ejectment against Hale and others had been set aside and held for naught by the supreme court of Arkansas?

Ans. If the decision was made before I made the lease, I knew it; but I considered it not for naught, but that it gave me right against all individuals.

Q. At the time of making the lease between yourself and Kubler for the lot in controversy, did you not know that you had instituted a suit in the Court of Claims against the United States for the purpose of settling the question of title to the Hot Springs quarter section between the Belding heirs and the United States, and that the question was then undecided?

Ans. I think the suit was commenced before the execution of the lease.

Q. Knowing of this litigation and that the title was in dispute and might be determined before the time fixed in the lease between yourself and Kubler would expire, what was your understanding if the court should finally decide against your claim, and what effect was such decision, if any, to have in terminating the lease?

Ans. My lease showed to all parties on its face that it was to determine when the title was settled, and there was no further understanding.

279 Ques. What, if anything, did you say to your tenants as to claiming rent after the title was settled?

A. I claimed the rent up to the decree of the Supreme Court of the United States and no further.

Q. Did you claim rent of Kubler up to the time of the decision of the Supreme Court of the United States or only up to the time of the decision of the Court of Claims?

A. I claim rent up to the decree of the Supreme Court of the United States, which was April 24th, 1876.

Q. Why did you not claim rent up to the time the decision awarded the lot to Kubler?

A. My contract was different and the property was in the hands of the Government.

Q. When the receiver came and took possession of the Hot Springs quarter section did you pay or offer to pay to him the rent which was demanded by him for the Kubler property?

A. He did not demand it of me, and I did not offer to pay it.

Q. State, if you know, whether the improvements which Kubler placed on the lot prior to the decision of the Supreme Court of the United States were destroyed by fire. If so, when?

A. Yes. The buildings were all destroyed March 5, 1878.

Q. At that time did you not know that the defendant Dr. George H. Smith was prosecuting a claim before the Hot Springs
280 Commission for said lot?

Ans. I do not know whether it was Smith or Kubler who was prosecuting the claim for the lot or not. The papers will show.

Q. Were you in Hot Springs during the years 1878 and 1879?

A. I was.

Q. Did you not almost daily during those years pass the lot which you had leased to Kubler?

Ans. I passed it very frequently. There may have been four or five days at different times, during bad weather, when I did not. When it was pleasant I generally passed it.

Q. In thus passing and repassing after the fire did you not notice that a new building was being put on the lot?

A. There was no lot laid off that a person could tell where they were; but they were generally rebuilding.

Ques. Did you not claim nearly all the ground before the commission which was included in the burnt district?

A. I filed a claim before the commission for the south half of the quarter section in bulk, which south half covered all the ground I had in possession when I was enjoined. I think that two-thirds of the burnt district was in the south half of the quarter section, and lot No. 2 was in it.

Q. What, if anything, did you say to Kubler or Smith about building on the lot after the fire?

281 Ans. I never said a word to any one of them, to my recollection.

Ques. When you saw that some one was rebuilding on the property which you claimed, why did you not admonish them they were building on your property?

Ans. From the simple fact that Judge Caldwell had sustained the leases of the receiver. I felt very bad when I saw them building houses on property on which I had built houses, but I did not say anything to any one about it.

Ques. Had you ever built a house on the ground which you leased to Kubler?

Ans. I had not. I had houses at an early day on both sides of the street, which I had showed before the commissioners, but I do not know that then was on the lot which I had leased to Kubler.

Ques. Did you feel bad when you saw a new house going up on the Kubler lot?

Ans. I can't say I ever thought of it, only when I had built houses myself.

Ques. Did you not know before the appointment of the
282 Hot Springs Commission that Kubler had been compelled to attorn to and recognize the United States as his landlord?

Ans. I do not know who took leases, but most all of them did.

Ques. If you had not at that time abandoned all claim to that property, why did you not pay rent to the receiver upon it?

Ans. Because he would not let me pay on my own houses, except the one I lived in, and I never abandoned it, but felt safe in the hands of the Government, and thought all the time they would pass some law that would give it to me.

Ques. Did you apply to the receiver for permission to pay rent upon the property in controversy, and did he refuse to allow you to pay rent on the same?

Ans. I did not, owing to his showing me that all the tenants should

have the preference. I applied for a number of buildings which I had built myself, but he refused me any except the house I lived in.

Ques. From the 24th day of April, 1876, down to the present time, as a matter of fact, who have been in possession and occupancy of the lot in controversy?

Ans. Mr. Kubler and Mr. Smith have been in possession of it all the time.

283 Ques. Have you or the Belding heirs at any time within a period of seven years since the decision of the Supreme Court of the United States against the claim of the Belding heirs and since Kubler and Smith were compelled to attorn to the United States instituted an action at law to obtain the possession of said lot or an action in equity, within seven years from that date, to have them or either of them declared a trustee in their behalf or vest title in them—that is, the Belding heirs?

Answer to above question. My claim has been prosecuted before the commission up to the time of its close.

Ques. Why do you refuse to answer the question put to you, as to whether you commenced action at law or in equity against Kubler or Smith within seven years from the date of the decision of the Supreme Court of the United States against the claim of the Belding heirs?

Ans. I brought no suit, but went on and prosecuted my claim before the Hot Springs Commission while I thought I had a right to.

Ques. After the Hot Springs Commission had decided against you why did you not bring an action at law or in equity against Kubler or Smith for the property?

284 Ans. Because there was other suits brought by Rector and taken to the Supreme Court of the United States, and I awaited the action of the Supreme Court of the United States.

Ques. Do you refer in the preceding answer to the case of Rector against Gibbons and others?

Ans. Yes.

Ques. Was not Rector claiming the property by reason of having made improvements upon the lot prior to the time it was leased by him to Gibbons?

Ans. I do not know anything about how the case was made out and don't know anything about it. I don't know who built there first or last.

Qu-s. If you know nothing about the grounds upon which the Rector suit was based, why did you wait on the action of the Supreme Court in this case?

Ans. I just supposed it was a similar case to mine and do not know how the case was prepared, and if it had been held up I should not have sued. When it was decided I thought that it in effect held that the tenants held in trust the title for me; then I commenced suit.

Ques. After the award of the Hot Springs Commission have
285 you not frequently expressed yourself satisfied with the awards made by them?

Ans. I don't recollect. I have frequently expressed that I did

not think any three men could have come here and satisfied as many people. They satisfied about one hundred tenants who would have been very clamorous.

Ques. When Sumpter was trying to procure legislation on the part of Congress looking to the issuing of the awards made by the commission did you not contribute money to pay the expenses of persons to Washington to defeat such legislation?

Ans. I did not know what Sumpter was at. I got a pamphlet in which he charged me with a good deal of fraud. I employed a lawyer to defend my character, and stated that they did satisfy more people than any three men would ever again. I paid him two thousand dollars.

Ques. You say you employed a lawyer to defend your character and paid him two thousand dollars; state the name of the lawyer and before what tribunal he was engaged in defending your character.

Ans. My understanding was there was before the Interior
286 Department, directly against me and my character, and I had other business before Congress—watching the reduction of the appraisements of the lots as made by the commissioners and looking after my interests generally—and my lawyer's name was W. W. Wilshire.

Ques. In this action are you claiming rent from Kubler down to the date of the — Court of Claims or down to the date of the decision of the Supreme Court of the United States?

Ans. I claim rent up to the decision of the Supreme Court, and if the court decides in my favor I shall claim all the court will allow me.

Ques. After the decision by the Court of Claims did not Kubler claim that the lease was at an end and refuse to pay rent?

Ans. He never refused to pay rent at any time, only that he was unable; but he refused to give me a note when I called on him to settle after the decision by the Supreme Court.

Ques. Have you at any time brought suit against Kubler for the rent which you now claim to be due?

Ans. I never have, believing he was not able to pay anything.

Ques. If he was not able to pay anything, why did you want his note?

287 Ans. I wanted it to show that he owed me, and the closing of account once in a while by note.

Ques. Why did you not enforce against him the lien against the improvements he had made on the lot, as alleged in your bill?

Ans. Because I thought he was too poor and not able to live and pay it.

Q. If you thought he was too poor to pay it, why do you seek to enforce it now?

A. I don't understand why the declaration is in that shape. I gave up all those rents long ago.

Q. How long has R. G. Davies, Esq., been your attorney?

Ans. I do not recollect. He was my attorney from some time in

1874 up to 1877, and then from the early part of 1880 up to the present time.

Q. Is it real- true that yourself, family, and the Belding heirs were awarded by the Hot Springs commissioners over one hundred lots?

A. I have no idea how many lots; I never counted them. I have no idea there are as many as one hundred. I think it is under one hundred. There were no awards to the Belding heirs. They did not file any claim, and all their claims were transferred to Wm. and Maria Gaines.

No cross-examination.

WM. H. GAINES.

Deposition of William Sumpter.

Ques. State your name, age, and residence.

Ans. My name is William Sumpter; reside in the city of Hot Springs, Arkansas, and my age is forty-five years.

288 Q. State if you had a conversation with the plaintiff shortly after the decision of the Supreme Court of the United States, in which it was held that the title to the Hot Springs quarter section was in the United States, and before the appointment of the Hot Springs Commission; if so, state who was present and what was said by William H. Gaines.

A. I had a conversation with him during the time alluded to, and he said the courts have decided against me and I no longer make any claim to the land claimed by your family.

Q. After the appointment of the commission, did Gaines claim the land which your family had heretofore claimed?

A. Yes; and filed a claim for it.

Q. After the award by the commission to your family, did you have a conversation with Gaines in relation to the awards? If so, state what he said at any time.

Ans. Some time after the awards there were three or four of us present talking of the awards as made by the commission, at which Gaines was present. I was complaining that great injustice had been done us, and Gaines said he was satisfied with the action of the commission, and for one was willing to abide by it. I do not recollect the names of the other parties who were present. I did not charge my mind with the recollection of the names of the
289 other persons because I thought the thing was settled for all time, and that we should have to abide by it.

No cross-examination.

WILLIAM SUMPTER.

Deposition — Jas. A. Smith.

Ques. State your name, age, and residence.

Ans. My name is James A. Smith; my age is 39 years; my residence, Hot Springs, Ark's.

Q. State if at any time, if so, when, after the Hot Springs Commission had made its awards, you had any conversation or conversations with Wm. H. Gaines, the plaintiff, about purchasing property in Hot Springs; and, if so, what he stated or advised in relation thereto.

Ans. I had sold Mr. Gaines a piece of property some time in the year 1881, I think. When I was about to deliver the deed our conversation*ed* — upon the subject of money. He said to me that the title to the Hot Springs property was now settled; that he thought Hot Springs would be quite a place, and that he thought the piece of real estate would advance, and advised me to purchase property in Hot Springs, if I could, at the earliest day it was possible.

Ques. Upon the faith you had as to the title being settled, as stated by Mr. Gaines, did your purchase any property in Hot Springs? If so, state the number of the lot and block.

A. Yes; I did afterwards purchase some property, to wit,
290 lots 8 and 9, in block 77; lot 8 adjoins the property of Philip Helfrich.

Ques. State, if you know, whether the property which you purchased, as above stated, was claimed by Gaines before the Hot Springs Commission and awarded to some one else?

Ans. I do not know whether he claimed it or not.

Ques. When you made the purchase alluded to did you have any conversation with Gaines about the same? If so, state what he said.

Ans. I do not recollect that I had any conversation with old man Gaines, but I did have a conversation with Albert Gaines, and he offered to assist me with building means to build a brick house on the property. Albert Gaines is a son of Wm. H. Gaines.

Ques. After you purchased state whether or not Gaines commenced suit against you to recover said lots 8 and 9, block 77?

Ans. He did.

No cross-examination.

J. A. SMITH.

Deposition of S. W. Vaughn.

Ques. State your name, age, and residence.

Ans. My name is S. W. Vaughn; reside in Hot Springs, Ark.; my age, 40 years.

Q. State if at any time you had a conversation or conversations with Gaines, the plaintiff, about the awards made by the Hot Springs Commission, in which he expressed himself either satisfied or
291 dissatisfied with said awards, and whether he expressed himself as being in favor of or opposed to disturbing said awards; if so, state what he said.

Ans. At one time Major Conger, Father Garlaty, the plaintiff, and myself were coming from Sulphur Springs to Hot Springs and — the road over our conversation turned upon the value of property at Hot Springs. Mr. Gaines said that if the awards as made by the commission were not disturbed, that he thought the property would appreciate, but if the awards should be opened or appealed

from it would result in litigation and in depreciation of the property. Prior to this conversation an effort had been made by parties to have the awards appealed from, and he deprecated such a course. I thought I had been injured or, rather, deprived by the commission of property which they ought to have awarded to me, and I asked Mr. Gaines if he was in favor of the Government or any one else denying its citizens the right of an appeal. He said it was better as it was, and was in favor of having matters remain as finally awarded by the commission. I was surprised at this position, and we had some pretty hot words over the matter, and Father Gurharty chided me for being so impetuous.

No cross-examination.

S. W. VAUGHN.

Deposition of Mrs. M. J. Worley.

Ques. State your name, age, and residence.

292 Ans. My name is M. J. Worley; reside in Hot Springs, Arks., and am of lawful age.

Ques. State if at any time since the Hot Springs Commission made its awards you had a conversation or conversations with the plaintiff Gaines; and, if so, state what he said.

Ans. Some time in December, 1880, I met Mr. Gaines at Wm. Wilson's office, in Hot Springs. I was then contemplating buying a piece of property on which the American house stands, and I asked Mr. Gaines what he thought of the property and the propriety of my making the purchase, and he said it was good property—no better, madam—and he advised me to buy, I not knowing at that time that Mr. Gaines ever claimed the property. I simply spoke to him about the purchase because he had lived here a long time, and for that reason thought his judgment on the subject would be worth listening to; and during the early part of 1881 I purchased the property I was talking to Mr. Gaines about, and paid about $6,000 or thereabouts in cash. When I was talking to Mr. Gaines about purchasing that property he never mentioned to me that he had any interest in it or claimed to have any interest in it.

Q. Did he afterwards bring suit against you for it?

A. Yes, sir; he did.

No cross-examination.

MRS. M. J. WORLEY.

293 *Deposition — John J. Sumpter.*

I have resided on the Hot Springs reservation since 1884. I was born in July, 1842. I was and have been ever since well acquainted with the ground on the west side of where Central avenue now runs, extending south on said avenue from the lot which was awarded to A. S. Garnett and known as the old court-house, in block 77, up to the lot claimed by Shickler, and south on said avenue to the lot claimed by James Madison and Westley Steele. I suppose that the

west side of Central avenue is 20 feet, more or less, further west now, as laid off by the Hot Springs Commission, than it was before, and that much nearer to the east line of what was known as the Sumpter claim, near the south end of said claim.

Q. How much of said Sumpter claim is embraced in the lot laid off on the west side of Central avenue, between the points mentioned as now platted—that is, in depth or measurement east and west—and how much of the claim of plaintiffs outside of said Sumpter claim, in depth, is embraced in said lot on the west side of said avenue?

A. The commission put into said lots from land on Sumpter's claim from 30 feet to 70 feet in depth. The east line or boundary of the Sumpter claim was not exactly parallel with said avenue.
294 It made a curve where the avenue was comparatively straight. There was more taken from the Sumpter claim about the middle of the district. There was about 20 feet taken off the Sumpter claim to add to the Schickler lot. There might have been a little more. I know that I leased him a part of said lot once, or himself or his wife; I don't know which. They kept a bakery, and, under said lease, built a bake-oven on my ground. I think that a part of the Toole improvements, on the lot claimed by Major Gaines, were on my ground. The eastern boundary line of the Sumpter claim was fenced in as an improvement of the Sumpters. In widening the avenue the occupants of the buildings on the west side thereof were compelled to move their buildings back or westward. There was but little level land between the west side of said avenue and the hill after it was widened, and to make space for their buildings, had to excavate into the hill. The formation of the hill was rock; that had to be blasted in some places to a depth of about 30 feet vertically in the hill side. Such improvements were necessary and very expensive. The houses of the occupants were required to be raised several feet to a grade established by the commission. Major Gaines has talked with me about the awards of the commission on
295 several occasions and always expressed himself satisfied with the awards until some time not long ago—that is, until some time after the decision. I don't know how long it was. I know that when I was trying to open the awards that Major Gaines and all the old claimants were fighting me. Albert Gaines, the son of Major Gaines and trustee of all the Gaines property, was in Washington city opposing my efforts to get a bill passed to grant the right of appeal from the decision and awards of the Hot Springs Commission. That was in 1880—the first part of the year. Geo. W. Baxter was there also and opposed my efforts, and I don't know whether he was Major Gaines' agent or not. W. P. Walsh was there also, opposing my efforts. I was deputy sheriff and deputy collector for Garland county from the time it was formed, 1874, when I was elected sheriff and collector. Generally during the time I was such sheriff and collector the realty in this reservation was not assessed for taxation, but only the improvement on the land was so assessed. Major Gaines gave in his land on the reservation that he claimed for taxation, but gave it in at much less value than the value of *of* the improvements. Since the award of the Hot Springs

Commission he has brought suit against the county of Gar-
296 land and Hot Springs county also to recover back the taxes so voluntarily paid by him on such assessments. I do not know what the result of such suits have been. He gave said lands in, I think, in the name of the Belding heirs.

(Signed) JOHN J. SUMPTER.

Deposition — Mrs. Jennie A. Smith.

My name is Jennie A. Smith; reside in Garland county, Arkansas, about one mile or a little — south of the city of Hot Springs. I am the wife of James A. Smith and one of the defendants. My husband, James A. Smith, and I own lots numbered (8) eight and (9) nine, in block numbered (77) seventy-seven, in the Hot Springs reservation, in the city of Hot Springs, Garland county, Arks., the property in controversy in these suits. We purchased them, lot eight, from Morris Moscowitz the 20th of June, 1883, for ($5,000) five thousand dollars cash. I saw it drawn out of the bank on that day to be paid to him, but did not see it given to him. Mr. Smith carried it from the bank, and I afterward saw the deed. I think I saw it on the same day. We purchased lot nine from Mrs. Mary J. C. Lewis on the 18th of May, 1882, for five thousand dolllars, all of which has been paid. It was considered a cash sale, but it was not all paid in cash. We paid her two thousand dollars in cash, and we gave her our note for $745.50 *dollars*, which we paid
297 November 18th, 1882, before it was due. We transferred to her two notes, aggregating two thousand dollars, on Lane, Rector & Goodman, I think, which she received as cash. The balance was paid at the time of the purchase in a sum she owed us for land. I never heard Major Gaines say, that I recollect of, that he would or would not prosecute, but that he was satisfied with the conclusion of the suit. That was what I gathered from his conversation. I don't recollect his exact words. If the old Major was here he could help me out in it. I don't know that I could say what suit, but it was a big suit, something about the reservation or a part of it. I never understood that there was but a small portion of the reservation in litigation, but always understood the titles were unsettled on it and nobody had any title until it was settled by the decision; but it was a matter that did not interest me much and I did not pay any attention except in a general way. I had no financial interests, except my property joined this and I wanted the city prosperous. I think I can recollect at two different times hearing Maj. Gaines speak about the awards of the commission. The first conversation I recollect, and I don't remember if I was a party and did not pay much attention, but remember be- impressed with the idea he was satisfied, although he had lost a good deal, because he thought litigation had been
298 a clog on the place for a good while and now it would build up and be to everybody's advantage. He and Mr. Smith were talking at that time. It was some time after papers had announced decisions and before we bought either lot. I am not certain

that they were speaking about the awards of the commissioners, but if they decided it last it must have been after that, for I know it was after the titles were considered settled and all litigation at rest. The second conversation, it occurred after we were sued. We never knew anything about nor had any notice of any lease from the plaintiff W. H. Gaines of any part of these lots of either of them—Morris Moscowitz or Mrs. Lewis or any other person—to those lots or the land sued for in these cases, until after we had paid the purchase-money and got the deeds. I am satisfied Mr. Smith had no such notice, for he never spoke to me about anything of the kind, and I know I did not. Mr. Smith negotiated altogether the purchase from Mr. Moscowitz, and I think we both talked with Mrs. Lewis about it. I never owned any property on the Hot Springs reservation until we bought this lot 9 from Mrs. Lewis, and never laid any claim to any before that time. I had no claim before the Hot Springs commissioners, and I don't think I was ever in
299 their office or where they were trying any claims, and I know I never was.

Cross-examination:

This has been my home since 1870. During that — I was away about two years. My maiden name was Ward. I knew there was a contest here and Gaines was a contestant, but did not know where his claim was located. I don't remember of any conversation with Mrs. M. E. Gaines about this property in controversy before I purchased.

JENNIE A. SMITH.

Deposition — Morris Moscowitz.

My name is Morris Moscowitz; age, 40 years; reside in Hot Springs, Ark. I owned lot 8, in block 77, in the city of Hot Springs, Ark. I sold it to Mr. & Mrs. Smith in 1883 for five thousand dollars cash, which was paid then, and I gave a deed to them then *then* for the lot. Mr. Smith negotiated the purchase. I mean James A. Smith. Smith and I had talked about the purchase before and I told him I would take $5,000, and at the time of the purchase he came back and asked me if I would still take $5,000. I told him yes. He asked me if I would give any time on part. I told him no. He asked me if it was encumbered. I told him no. He
300 asked me if I had a patent. I pulled out the patent and gave it to him, and I have never seen it since. He carried it away and came back the same day and made the trade and paid the $5,000. That is all I recollect of being said between him and me about it, and I never did say anything to Mrs. Smith about it. I considered the $5,000 paid for it a fair price for the lot. I sold it to him because I wanted the money and not for the purpose of defeating or beating anybody. It joins a lot which Mr. and Mrs. Smith had before then bought of Mrs. Lewis. Neither of plaintiffs ever demanded the lot from me or any rent for it at any time after the receiver came here, which was before the Hot Springs com'rs

came. I am the same person to whom the Hot Springs commissioners awarded this lot. The plaintiffs nor either of them have ever said anything to me about this lot since it was awarded and never brought any suit against me until this suit was brought.

Cross-examination:

I leased that ground from the plaintiff Wm. H. Gaines. We had a contest before the Hot Springs Commission as to who had the right to purchase. I mean the plaintiff and myself. I went into possession of that property under that lease and continued
301 possession under that lease until the receiver came.

Re-examined:

The land was not improved in any way, but open when I leased it from plaintiff Wm. H. Gaines.

M. MOSCOWITZ.

Deposition — Geo. W. Baxter.

My name is Geo. W. Baxter; age, 42; residence, Hot Springs, Ark.; occupation, real-estate and insurance agent. I have been in the real-estate agency about ten years at this place. I have known the plaintiffs about ten years. They have resided in the city of Hot Springs and its suburbs ever since I knew them. I met the plaintiff Wm. H. Gaines very frequently all during the last ten years. I acted as his agent for awhile—soon after the decision of the Supreme Court, soon after the appointment of Morgan as receiver—in settling up with his lessees their back rent and in some few real-estate trades. His general proposition in the matter with those who came up and settled fairly was that the title had passed from him, if he ever had any, to the United States, and, while he thought the proceeding was wrong, the case had terminated against him—Uncle Sam would be the landlord; and the impression left on my mind from conversations with him and in the
302 presence of the lessees impressed itself very clearly on me that he would never make any further claim for the property where settlement- were made by the lessees. I don't think there is any question but what he stated that in effect to them. We must have gone to all his tenants and made that proposition, but it may have been we did not see some of them. I have no specific recollection of making it to Moscowitz.

(Plaintiffs' attorney objects to testimony for irrelevancy and incompetency.)

My recollection is the Hot Springs commissioners concluded their work of awarding land in the Hot Springs reservation in the winter of 1879—in Dec'r, 1879. I know there was a good deal of dissatisfaction with the awards of the commissioners when they were made known among the inhabitants of the reservation, but a great majority were satisfied. An effort was made to secure passage of a law by Congress granting a right of appeal from decisions of Hot

Springs commissioners to the Federal courts. I don't know whether it was the Court of Claims or dist. court. While that effort was being made I had at least one talk with Major Gaines, one of the plaintiffs. He agreed with me in the fact that the opening up the Hot Springs titles would be very detrimental to the city and
303 interests of the people, and expressed the hope that the bill would not become a law. He expressed himself in a general way as being satisfied with the result of what the commissioners had done. He expressed himself satisfied with their acts and hoped the bill would not become a law. During the years 1880, 1881, & 1882 & 1883 there were a good many transactions in real estate here. I mean sales of lots that had been awarded by the commissioners. Quite a number of these were on lands that were embraced in Gaines' claim before the Hot Springs Commission. I never heard Major Gaines during all that time express any dissatisfaction with the awards or disposition to attack them. I can't say that I know from him that he knew of those sales, but they were open and generally mentioned in the newspapers. We had a great many talks about buying property here, but I don't know that he ever employed me or requested me to purchase property from any of his former tenants to whom an award had been made. I never knew of plaintiff Gaines bringing any suits against his former tenants until after the decision of the U. S. Supreme Court in the Rector-Ballentine case. I don't know, but I understood the plaintiffs have
304 brought suits in the Federal court, which are the only suits I have known of their bringing against their former lessees. I know that it was notoriously and generally understood among the people here up to the time of the decision — the case of Rector *vs.* Gibbons or Ballentine, which occurred last year, that the plaintiffs favored the awards of the commission and wanted them to stand as they were. I am not interested in the result of any of these suits.

Plaintiffs' attorney objects to the whole testimony as incompetent and irrelevant.

Cross-examination:

I don't know whether I testified in the Gaines cases before the Hot Springs Commission or not. I testified in fifty or sixty cases. I settled, in connection with Maj. Gaines, with Mrs. Sarah Flowers, and, I think, with King Flowers; also with R. F. Parker and Morrison. I settled with Allard and with Goode. I can't call to mind and be absolutely positive as to the balance of his lessees, but I think settlements were made in a majority of cases where they owed him. In most cases notes were given or agreements entered into, either verbal or written, where settlements were arrived at.

Q. Are you certain settlements were made in the cases you have named?

305 A. I am as certain as I can be of anything after a lapse of nine years without my written record to guide me.

Q. How did you settle with Mrs. Flowers?

A. I think Maj. Gaines took her due bill or note, and either re-

ceipted to her in full or quitclaimed to her in writing. I think a similar settlement was made with Mrs. Magrath. I don't know how the Parker settlement was made. I won't testify absolutely that there was a settlement made with Parker, but — recollection is that there was. I don't remember about Morrison. Allard was occupying the upper floor as a printing office, and Maj. Gaines and myself went up to see Allard. When the rent was asked for Allard claimed that Maj. Gaines owed him a bill, which, I think, the Major allowed or admitted, and proposed to give him credit for it in the settlement. After some further conversation — between the two, in which Allard insisted before he paid he must have a relinquishment or Major Gaines must relinquish all claim in the future on him or on the land, which, I feel very sure, to the best of my recollection, he gave verbally. As to whether Allard paid the balance of the ground rent, I don't remember. This occurred in the early summer of 1876, just before Morgan, the U. S. receiver, came here; just after the
306 title had been decided to be in the United States.

Q. Did Major Gaines tell them the title had been decided against him and the United States would now be their landlord?

A. Yes; the latter part, in reference to the landlord, was in reference to A. O. Morgan, U. S. receiver, being sent here for the purpose of collecting rents—sent here by appointment of the Court of Claims.

Q. Was this before or after the act of Congress appointing a commission to settle claims here?

A. It was before.

Q. After that act passed, did you ever hear Major Gaines tell these parties that he had no claim, unless it was some party he had made a deed to?

A. I have no recollection of having any conversation with him on the subject except in my own case. When I asked him to quitclaim to me he did so, and mentioned several others to whom he had or or intended to quitclaim.

Q. Do you know of any party that he agreed to make a deed to that he didn't make a deed to?

A. No; nor do I know of any one to whom he did make a deed except myself, as a matter of fact, although he may have made many that passed under my observation at that time that I do not now recall to mind.

307 Q. Do you know of any suit having been brought against plaintiffs by John J. Sumpter *et al.* for property awarded by the commissioners to plaintiffs?

A. I do not personally, but have heard that such suit was brought.

Q. Did you learn that suit was brought soon after the award?

A. That is my recollection.

Q. Were you the agent of Maj. Gaines after 1876, the time you spoke of?

A. No; except in some special cases.

Q. Did you go with Maj. Gaines to the receiver?

A. I don't remember.

Q. Were you a member of the last legislature?

A. I was.

Q. Did you introduce a memorial, bill, or resolution to ask Congress to pass a law to nul-ify the decision of the Supreme Court in case Rector *vs.* Gibbon?

A. I introduced a memorial praying Congress to pass an act to quiet titles in Hot Springs, but mentioned no special case or any decision of Supreme Court. The prayer was for general relief.

Q. Have you a copy of that memorial in your possession?

A. I have not.

Q. Who prepared this memorial?

A. I prepared it myself.

Re-examined:

308 Q. If he stated anything to Allard as to whether he would or would not relinquish all future claim to the ground occupied by him or about assisting him in acquiring title in case occupancy should afterwards be recognized as furnishing any right, state what it was and all he so said, particularly giving his and Allard's language as accurately as you can.

A. I cannot answer that question in detail, as I have testified before. The impression in my mind at the time *and* gained from the conversations of Allard and Gaines, that if Allard settled fairly with him—*i. e.*, Gaines—that he, Gaines, would make no further claim on Allard or for the lot.

Re-X examination:

Q. Did Allard ever settle?

A. I don't know; they came to an agreement. That is my recollection as to the settlement; whether it was, can't at this day tell.

Re-examination:

Q. Did or did not Allard in that settlement give Major Wm. H. Gaines a note or due bill?

A. My recollection is a due bill passed, but of this I am not certain.

GEO. W. BAXTER.

309 UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct, and compared copies of the original remaining of record in my office.

The Seal of the Circuit Court of East. Dist. Ark., Western Division, U. S. A.

In witness whereof I have hereunto set my hand and the seal of said court this 5th day of October, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States of America the one hundred and thirteenth.

Attest:

RALPH L. GOODRICH, *Clerk*,
By W. P. FEILD, *D. C.*

310 In the Supreme Court of the United States.

JNO. J. SUMPTER *et al.*
vs.
WM. H. GAINES *et al.* } No. 313.

Whereas there is pending in the Supreme Court of the United States the cases of Sumpter *et al. vs.* Gaines *et al.*, #313, and the two cases of Geo. G. Latta *vs.* Gaines *et al.*, #314 and #315; and

Whereas by an agreement made with Mr. Benjamin, attorney for W. H. Gaines *et al.* in the trial of the causes in the United States court for the eastern district of Arkansas, *by which* the testimony in certain other causes pending in said court was to be used and taken as testimony in the three above-mentioned cases; and

Whereas, when said cause was decided in the United States court for the eastern district of Arkansas as aforesaid, said testimony, in accordance with said agreement as aforesaid, was copied and a transcript made of the same and said transcripts of said cases were filed in the Supreme Court of the United States; and

Whereas the testimony in cases #313, #314, and #315 is identical and the same testimony; and

Whereas this testimony was taken from the testimony in the other cases in said court, in which were involved similar issues; and

311 Whereas said testimony has been printed in the other causes pending in the Supreme Court of the United States; and

Whereas it would be an expenditure without any benefit to either party herein to cause said testimony to be reprinted, and the same having already been printed:

Now, this agreement, made and entered into between Jno. J. Sumpter — Geo. G. Latta, by Jno. McClure and U. M. & G. B. Rose, attorneys for all the parties herein, witnesseth:

That the said parties agree that the printed testimony in the cases now pending in the Supreme Court, which were appealed from the circuit court of the United States for the eastern district of Arkansas, and in which cases the said Wm. H. Gaines *et al.* are appellees, shall be taken as the testimony in this case, and the same shall be used as the testimony in the three above-mentioned cases, and that the record of those cases shall be a record in these cases, "excepting the complaint, answer, and other pleadings filed in said causes and the testimony taken before the Hot Springs commissioners and the records of the United States circuit court in these cases, together with the report of the special master and the decree thereon."

And it is agreed that the testimony in #313, #314, and #315 shall not be printed, except as above agreed.

This agreement is made without an opportunity to examine the transcripts in this case, and it is agreed that if, after the tran-

312 script is printed in accordance with this agreement, it shall be required by the appellees that any additional matter in the

transcript on file shall be printed, then said appellants shall cause it to be printed accordingly.

Given under our hand- this 4th day of February, 1892.

JOHN McCLURE,
For Appellants.

U. M. ROSE,
For Appellees.

313 [Endorsed:] 13466. Supreme Court of the U. S. October term, 1891. Term No., 313. John J. Sumpter *et al*, appellants, *vs.* Wm. H. Gaines *et al.* Stipulation as to record and to omit parts of same in printing.

[Stamped:] Office Supreme Court U. S. Filed Feb. 15, 1892. James H. McKenney, clerk.

Endorsed on cover: Case No. 13,466. E. Arkansas C. C. U. S. No. 313. John J. Sumpter and George G. Latta, appellants, *vs.* William H. Gaines and Maria Gaines. Filed January 2, 1889.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

JOHN J. SUMPTER *et al.*, Appellants,
v.
WILLIAM H. GAINES & MARIA GAINES, Appellees. } No. 313.

It is agreed of counsel in this case, in order to lessen the printed record and to shorten the case made, that the plaintiff read in evidence in the court below the transcript of the proceedings before the Hot Springs Commission showing his petition, his entry of the land, and his improvements on the same, as shown in the case of George H. Smith, appellant, *v.* William H. and Maria Gaines, now on the docket of this court and numbered 302; that said Gaines and wife filed their petition before said commissioners within the time required by law, asking to be allowed to purchase the lot named in the bill herein; that said appellant Sumpter also filed his petition before said commissioners in due time, asking that he be allowed to purchase said lots, and that said petitions were consolidated and heard by said board as one case.

That said Gaines, as appears by said transcript, read in evidence before said commissioners a written lease of said lot, which is as follows:

This agreement of lease, made this 15th day of April, 1874, between William H. Gaines, as lessor, and D. P. Beldin, as lessee, witnesseth: That the lessor, for and in consideration of the covenants hereinafter agreed to be performed by the lessee, has leased and let unto the said lessee a certain lot or parcel of land lying and being situate in the county of Garland, in the State of Arkansas, and described as follows, to wit: Beginning at a point one foot south of the southwest corner of the St. Charles restaurant, on the east side of the street, in the village of Hot Springs, run thence south along the east side of said street twenty-three feet to the plank alley-way on the north side of Kimbell's store; run thence east at right angles with the street one hundred feet, thence north twenty-three (23) feet, thence west one hundred feet to the place of beginning, said lot being twenty-three by one hundred feet; to have and to hold the same unto said lessee from date hereof until the 15th day of April, 1875, with the express understanding that, if the lessee so elect and choose, this lease shall be renewed from year to year upon the same terms as are hereinafter provided until the title to the Hot Springs, namely, S. W. ¼ of sec. 33, town. 2 S., range 19 west, quarter section of land is settled; and the lessee covenants and agrees to pay to the lessor or his legal representatives, as a rent on the above-named lot, the sum of two hundred and thirty dollars per annum, in install-

ments of fifty-seven dollars and fifty cents each, on the 15th days of each April, July, October, and January, for each and every year during the continuance hereof, and to deliver up peaceable possession of the said lot to the lessor or his legal representatives at the expiration hereof, unless the lessee elect to renew this lease as above provided for; and it is agreed that the lessee shall have the privilege of a walk-way four feet wide from east end of said lot north to the street running from the Main street of Hot Springs to William H. Gaines' residence; and it is further agreed that all buildings and improvements that may be erected on the said lot by the lessee during the continuance hereof may be removed therefrom by the lessee or his legal representatives at any time within thirty days after the expiration of this lease: Provided, however, that the lessor shall have a lien on all such buildings and improvements to secure the payment of the rent hereinabove provided for; and if the lessee or his legal representatives shall at any time make default and shall be in arrears with said rent or any part thereof for fifteen days at any one time, the lessor may, at his own election, enter upon the premises, eject the lessee therefrom, and repossess himself of the same and terminate this lease without notice or legal process.

This lease shall not be assigned nor the premises underlet without the written consent of the lessor or his legal representatives being first endorsed hereon.

In witness whereof we, the parties hereto, have hereunto set their hands and seals at Hot Springs.

Signed in duplicate this 15 day of April, 1874.

WM. H. GAINES. [SEAL.]
D. P. BELDIN. [SEAL.]

Before said commission said Sumpter testified in substance as follows:

I have known the lots for thirty years. I obtained possession of them in March, 1875, from D. P. Beldin, who had leased them from Wm. H. Gaines. Beldin assigned me his lease. There were no improvements on the lots when I bought or at the date of the lease. In the spring of 1875 I built a one-story house on it.

The assignment of the lease was made to Sumpter and Smith. I afterwards got a deed from Smith for his interest in the lots, Smith and I, and since my purchase from him I alone have been in possession of the lots.

When the receiver was appointed by the Court of Claims I took a lease from him. The house I built was worth $500.00 or $600.00. By my lease from the receiver I was to pay $22.00 a month for the lots. We paid Gaines rent until the 24th day of April, 1876, under protest.

R. G. Davis testified before the commission as follows: I as agent of W. H. Gaines collected the rents from Smith from 1874 to about July 1st, 1876. He paid them under protest.

On the 9th day of October, 1879, said commissioners awarded the right to purchase said lots to said John J. Sumpter and a patent was issued to him by the United States before the beginning of this suit.

This, with the testimony shown in the printed transcript, was all the testimony introduced in the cause on the hearing thereof.

Given under our hands this 8th day of April, 1892.

JOHN McCLURE &
GEO. G. LATTA,
Att'ys for Appellants.
U. M. ROSE,
G. B. ROSE,
For Appellees.

[Endorsed:] Case No. 13,466. Supreme Court U. S., October term, 1891. Term No., 313. John J. Sumpter *et al.*, appellants, *vs.* William H. Gaines *et al.* Stipulation and addition to record.

[Stamped:] Office Supreme Court U. S. Filed Apr. 11, 1892. James H. McKenney, clerk.